

Queensland



TRANSPORT INFRASTRUCTURE ACT 1994

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TRANSPORT INFRASTRUCTURE ACT 1994

[as amended by all amendments that commenced on or before 1 January 2005]

An Act about infrastructure and related matters

CHAPTER 1—PRELIMINARY

1 Short title

This Act may be cited as the *Transport Infrastructure Act 1994*.

2 Objectives of this Act

(1) The overall objective of this Act is, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to provide a regime that allows for and encourages effective integrated planning and efficient management of a system of transport infrastructure.

(2) In particular, the objectives of this Act are—

- (a) to allow the Government to have a strategic overview of the provision and operation of all transport infrastructure; and
- (b) for roads—to establish a regime under which—
 - (i) a system of roads of national and State significance can be effectively planned and efficiently managed; and
 - (ii) influence can be exercised over the total road network in a way that contributes to overall transport efficiency; and
 - (iii) account is taken of the need to provide adequate levels of safety, and community access to the road network; and
- (c) for miscellaneous transport infrastructure—to establish a regime for the effective planning and efficient management of the infrastructure; and
- (d) for rail—to establish a regime that—

Transport Infrastructure Act 1994

- (i) contributes to overall transport effectiveness and efficiency; and
 - (ii) provides for adequate levels of safety; and
 - (iii) contributes to lower transport costs by allowing the maximum flexibility in rail transport operations consistent with achieving safety objectives; and
 - (iv) provides a high level of accountability; and
 - (v) allows railway managers and operators to make decisions on a commercial basis; and
 - (vi) provides a framework under which Queensland Rail¹ may operate as required by the *Government Owned Corporations Act 1993*; and
- (e) for ports—to establish a regime under which a ports system is provided and can be managed within an overall strategic framework by GOCs in accordance with the principles specified in the *Government Owned Corporations Act 1993*; and
- (f) for air—to promote basic access to air services, and regional development, by making provision about air transport infrastructure;
- (g) for public marine transport—to establish a regime under which—
- (i) public marine facilities are effectively and efficiently managed; and
 - (ii) the use of waterways for transport purposes is effectively and efficiently managed; and
- (h) for busways and light rail—to establish a regime for each that—
- (i) contributes to overall transport effectiveness and efficiency; and
 - (ii) provides for safely constructed, managed and operated infrastructure; and
 - (iii) is responsive to community needs; and
 - (iv) offers an appealing alternative to private transport in a way that takes into account overall environmental, economic and social influences of transport; and

¹ Queensland Rail is a GOC under the *Government Owned Corporations Act 1993*.

- (v) addresses the challenges of future growth; and
- (vi) provides busway and light rail transport infrastructure and passenger services at a reasonable cost to the community and government; and
- (vii) results in minimal interference with access to and from the road network, but provides for reasonable compensation for interference; and
- (viii) encourages the facilitation and use of public transport; and
- (ix) gives priority to public transport over private vehicles; and
- (i) for light rail—to establish a regime that provides for—
 - (i) flexibility in the choice between private and public construction and management; and
 - (ii) land tenure arrangements allowing private management to be established on a sound financial basis.

3 Definitions—the dictionary

(1) A dictionary in schedule 6 defines particular words used in this Act.

(2) Definitions found elsewhere in the Act are signposted in the dictionary.

4 State/Commonwealth agreements or arrangements

The powers and discretions conferred by this Act may be exercised in accordance with an agreement or arrangement between the State and the Commonwealth about the funding of transport infrastructure.

CHAPTER 2—TRANSPORT INFRASTRUCTURE STRATEGIES

5 Development of transport infrastructure strategies

(1) The chief executive must, from time to time, develop for the Minister's approval transport infrastructure strategies that are designed to

give effect to the coordination plan in relation to transport infrastructure in accordance with the objectives of this Act.

(2) In developing transport infrastructure strategies, the chief executive must take reasonable steps to engage in public consultation.

(3) The Minister may, at any time, direct the chief executive to prepare new transport infrastructure strategies for the Minister's approval or to amend transport infrastructure strategies in the way the Minister directs.

(4) The Minister may approve transport infrastructure strategies that are submitted for approval or require the chief executive to amend the strategies in the way the Minister directs.

6 Contents of transport infrastructure strategies

(1) Transport infrastructure strategies must include—

- (a) a statement of the specific objectives sought to be achieved; and
- (b) proposals for the provision of transport infrastructure; and
- (c) investment criteria for deciding priorities for government supported transport infrastructure between and within the different transport modes and options for financing the priorities; and
- (d) criteria for deciding which roads should be controlled by the chief executive as State-controlled roads; and
- (e) appropriate performance indicators for deciding whether, and to what extent, the objectives of the strategies have been achieved.

(2) Transport infrastructure strategies must aim to provide an adequate framework for coordinating and integrating the provision of transport infrastructure as between the different transport modes.

(3) Transport infrastructure strategies must take account of agreements or arrangements between the State and the Commonwealth about the funding of transport infrastructure.

(4) Transport infrastructure strategies for the SEQTA area under the *Transport Planning and Coordination Act 1994* must not be inconsistent with, and must give effect to any integrated regional transport plan in force for the area.

7 Tabling of transport infrastructure strategies

The Minister must cause transport infrastructure strategies, and each amendment of transport infrastructure strategies, approved by the Minister to be tabled in the Legislative Assembly.

CHAPTER 3—OBLIGATIONS ABOUT TRANSPORT INFRASTRUCTURE

8 Objective of chapter

In giving effect to the objective of this Act, this chapter is intended to ensure value for money for resources applied to the construction, maintenance and operation of transport infrastructure.

9 Obligations about government supported transport infrastructure

The chief executive must ensure that—

- (a) the construction, maintenance and operation of all government supported transport infrastructure for which the chief executive is responsible is carried out in accordance with standards published by the chief executive that are designed to achieve—
 - (i) efficiency; and
 - (ii) affordable quality; and
 - (iii) cost effectiveness; and
- (b) construction, maintenance or operation is carried out in a way that—
 - (i) takes into account national and international benchmarks and international best practice; and
 - (ii) promotes, within overall transport objectives, the safe transport of persons and goods; and
 - (iii) encourages efficient and competitive behaviour in the construction and maintenance of transport infrastructure; and

- (c) contracts that are let for the construction, maintenance or operation of transport infrastructure are designed in a way that encourages efficient performance by the contractor.

10 Report on giving effect to s 9

Each annual report of the department must include a report on the way in which effect has been given to section 9 (Obligations about government supported transport infrastructure) during the year to which the report relates.

CHAPTER 4—IMPLEMENTATION OF TRANSPORT INFRASTRUCTURE STRATEGIES

PART 1—ROADS IMPLEMENTATION PROGRAMS

11 Development of roads implementation programs

(1) The chief executive must, each year, develop for the Minister's approval roads implementation programs for the year and for 1 or more later years.

(2) Roads implementation programs must include—

- (a) a program of projects, and policies and financial provisions, for implementing the transport infrastructure strategies in relation to road transport infrastructure, including roads that are not State-controlled roads; and
- (b) performance targets for road transport infrastructure.

(3) Roads implementation programs may include proposals to spend amounts on transport infrastructure other than road transport infrastructure if the spending would contribute to intermodal effectiveness and efficiency.

(4) In developing roads implementation programs, the chief executive must take reasonable steps to consult with local governments that, in the opinion of the chief executive, would be affected by the programs.

(5) Roads implementation programs are to be made publicly available in the way decided by the Minister.

(6) The Minister may at any time direct the chief executive to amend roads implementation programs.

(7) The Minister may approve roads implementation programs that are submitted for approval or require the chief executive to amend the programs in the way the Minister directs.

12 Consistency with transport infrastructure strategies

(1) Subject to directions of the Minister, roads implementation programs must be consistent with transport infrastructure strategies.

(2) If the Minister gives a direction under this section that results in roads implementation programs being inconsistent with transport infrastructure strategies, the Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 5 sitting days after it is given.

13 Report on operation of roads implementation programs

Each annual report of the department must include a report on the operation of the roads implementation programs during the year to which the annual report relates.

PART 2—RAIL IMPLEMENTATION PROGRAMS

14 Development of programs

(1) The chief executive must, each year, develop for the Minister's approval rail implementation programs for the year and for 1 or more later years for rail transport infrastructure that is government supported transport infrastructure.

(2) Rail implementation programs must include—

- (a) a program of projects, and policies and budgets, for implementing the transport infrastructure strategies for rail transport infrastructure that is government supported transport infrastructure; and

(b) performance targets for the rail transport infrastructure.

(3) In developing rail implementation programs, the chief executive must take reasonable steps to—

(a) consult with local governments and railway managers and operators that the chief executive considers would be affected by the programs; and

(b) minimise conflict between the programs and expenditure programs of local governments and railway managers and operators.

(4) Rail implementation programs are to be made publicly available in the way decided by the Minister.

(5) The Minister may, at any time, direct the chief executive to amend a rail implementation program.

(6) The Minister may—

(a) approve a rail implementation program submitted for approval; or

(b) require the chief executive to amend a rail implementation program submitted for approval.

15 Consistency with transport infrastructure strategies

(1) Subject to the Minister's directions, a rail implementation program must be consistent with transport infrastructure strategies.

(2) If a direction of the Minister results in a rail implementation program being inconsistent with a transport infrastructure strategy, the Minister must table a copy of the direction in the Legislative Assembly within 5 sitting days after it is given.

16 Report on implementation of programs

Each annual report of the department must include a report on the implementation of the rail implementation program for the year of the report.

PART 3—IMPLEMENTATION PROGRAMS FOR MISCELLANEOUS TRANSPORT INFRASTRUCTURE

17 Development of implementation programs for miscellaneous transport infrastructure

(1) The chief executive must, each year, develop for the Minister's approval implementation programs for miscellaneous transport infrastructure for the year and for 1 or more later years.

(2) Implementation programs for miscellaneous transport infrastructure must include—

- (a) a program of projects, and policies and budgets, for implementing the transport infrastructure strategies about the miscellaneous transport infrastructure covered by the programs; and
- (b) performance targets for that miscellaneous transport infrastructure.

(3) Implementation programs for miscellaneous transport infrastructure may include proposals to spend amounts on transport infrastructure other than miscellaneous transport infrastructure if the spending would contribute to intermodal effectiveness and efficiency.

(4) In developing implementation programs for miscellaneous transport infrastructure, the chief executive must take reasonable steps to consult with local governments that, in the opinion of the chief executive, would be affected by the programs.

(5) Implementation programs for miscellaneous transport infrastructure are to be made publicly available in the way decided by the Minister.

(6) The Minister may at any time direct the chief executive to amend implementation programs for miscellaneous transport infrastructure.

(7) The Minister may approve implementation programs for miscellaneous transport infrastructure that are submitted for approval or require the chief executive to amend the programs in the way the Minister directs.

18 Consistency with transport infrastructure strategies

(1) Subject to directions of the Minister, implementation programs for miscellaneous transport infrastructure must be consistent with transport infrastructure strategies.

(2) If the Minister gives a direction under this section that results in implementation programs for miscellaneous transport infrastructure being inconsistent with transport infrastructure strategies, the Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 5 sitting days after it is given.

19 Report on operation of implementation programs for miscellaneous transport infrastructure

Each annual report of the department must include a report on the operation of the implementation programs for miscellaneous transport infrastructure during the year to which the annual report relates.

PART 4—TRANSPORT GOCS**20 Transport GOCs**

(1) In preparing a corporate plan or a statement of corporate intent, Queensland Rail and each port authority must take into account the transport infrastructure strategies.

(2) Queensland Rail or a port authority may spend amounts on transport infrastructure other than rail transport infrastructure or port infrastructure if the spending would contribute to effectiveness and efficiency.

CHAPTER 5—AIR TRANSPORT INFRASTRUCTURE

21 Air transport infrastructure funding programs

(1) The chief executive may develop, for the Minister's approval, an air transport infrastructure funding program.

(2) The purpose of a program is to facilitate basic access to air transport services and regional development.

(3) An air transport infrastructure funding program must include a program of government funding to facilitate the upgrading or building of runways, landing strips or ancillary works.

(4) The chief executive may, with the Minister's approval, amend an air transport infrastructure funding program.

(5) The chief executive may develop guidelines, consistent with the objectives of this Act and government policy, for assessing funding applications under a program.

(6) The chief executive must make any current program or guidelines publicly available.

22 Report on implementation of program

Each annual report of the department must include a report on the implementation of the air transport infrastructure funding program for the year of the report.

CHAPTER 6—ROAD TRANSPORT INFRASTRUCTURE

PART 1—PRELIMINARY

23 Scope of chapter

(1) To give effect to the objectives of this Act in relation to road transport infrastructure, the chief executive has, subject to the Minister and as required by this chapter—

- (a) the function of influencing the total road network; and
- (b) control over roads of State significance in the total road network, including roads of national significance that are managed in accordance with agreements or arrangements between the State and the Commonwealth about the funding of road transport infrastructure.

(2) This chapter establishes a framework under which the construction, maintenance or operation of a State-controlled road can be done by the chief executive, or by a local government or someone else under agreements or arrangements with the chief executive.

PART 2—STATE-CONTROLLED ROADS

Division 1—Declaration of State-controlled roads

24 Declaration of State-controlled roads

(1) The Minister may, by gazette notice, declare a road or route, or part of a road or route, to be a State-controlled road.

(2) A declaration must be consistent with criteria about the declaration of State-controlled roads in the transport infrastructure strategies.

(3) A declaration must enable the location of the road to be identified.

(4) The location may be identified by specifying—

- (a) the starting and ending points of the road; and
- (b) the alignment of the road; and
- (c) the width of the road by reference to the constructed centre line of the road pavement or surface.

(5) Unless otherwise specified in a declaration, the width of a State-controlled road through a State reserve, State forest, timber reserve, vacant State land or pastoral holding is 30 m each side of the centre line of the trafficked route.

25 Consultation before declaration

Before making or revoking a declaration under section 24 (Declaration of State-controlled roads), the Minister must—

- (a) notify each local government that would, in the Minister's opinion, be affected by the proposed declaration or revocation; and
- (b) give the local governments a reasonable opportunity to make submissions to the Minister on the proposed declaration or revocation.

26 State-controlled roads on rail corridor land

(1) This section applies if, under section 24, the Minister intends to declare a road or route, or part of a road or route, that crosses rail corridor land and continues on the other side of the rail corridor land to be a State-controlled road.

(2) Before making the declaration, the Minister must—

- (a) consult with the railway manager, if any, for the rail corridor land; and
- (b) give the railway manager a reasonable opportunity to make submissions to the Minister on the declaration.

(3) If the Minister decides to declare the road or route, or part of the road or route, to be a State-controlled road, the Minister must, when making the declaration, declare in the gazette notice the part of the rail corridor land where it is crossed by the road or route to be a common area (“**common area**”) for the rail corridor land and the State-controlled road.

(4) When the common area is declared—

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- (a) the chief executive may construct, maintain and operate the State-controlled road on the common area in a way not inconsistent with its use as rail corridor land; and
- (b) a railway manager for the rail corridor land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as State-controlled road; and
- (c) the railway manager and its agents or employees do not have any liability for the State-controlled road or its use or operation on the common area.

Examples for paragraph (a)—

- a level crossing
- a bridge or other structure over a railway
- a bridge or other structure that allows the road to pass under the railway.

(5) Unless the chief executive and a railway manager for the rail corridor land otherwise agree—

- (a) subject to section 251,² the chief executive is responsible for maintaining the State-controlled road on the common area; and
- (b) if the State-controlled road on the common area stops being used, the chief executive is responsible for the cost of removing road transport infrastructure from the common area and restoring the railway.

(6) The State is taken not to be in breach of any of its obligations in a sublease of the rail corridor land between the State and the railway manager by—

- (a) the Minister's declarations; or
- (b) anything done by the chief executive under chapter 6 for the common area.

(7) After the common area is declared—

- (a) the chief executive must promptly give a copy of the gazette notice of the declarations to the registrar of titles; and

2 Section 251 (Maintaining roads crossing railways)

- (b) the registrar of titles must record the declarations on the relevant lease of the rail corridor land to the State and any affected sublease in the leasehold land register.

Division 2—Motorways

27 Declaration of motorways

(1) The Minister may, by gazette notice, declare that the whole or a part of a State-controlled road is a motorway.

(2) A declaration must enable the location of the motorway to be identified.

(3) Before making or revoking a declaration, the Minister must—

- (a) notify each local government that would, in the Minister's opinion, be affected by the proposed declaration or revocation; and
- (b) give the local governments a reasonable opportunity to make submissions to the Minister on the proposed declaration or revocation.

Division 3—Chief executive to have powers of a local government

28 Chief executive to have power of a local government for State-controlled roads

The chief executive may exercise, for a State-controlled road in the area of a local government, all of the powers that the local government may exercise for a local government road in the area.

PART 3—CONSTRUCTION, MAINTENANCE AND OPERATION

29 Powers of chief executive for road works contracts etc.

(1) The chief executive may, in accordance with the relevant roads implementation program, carry out, or enter into contracts for the State with other persons (including local governments, State government bodies and agencies of the Government of some other State or of a Territory) for the carrying out of—

- (a) road works on a State-controlled road or on land that is intended to become a State-controlled road; or
- (b) other works that contribute to the effectiveness and efficiency of the road network; or
- (c) the operation of a State-controlled road.

(2) The chief executive may, for the State, carry out road works on a local government road in accordance with an agreement between the chief executive and the local government.

(3) The chief executive may, for the State, enter into contracts with other persons for road works to be carried out outside the State by the chief executive, a local government, a State government body or a contractor to the chief executive in accordance with an agreement between the State and the other State or Territory concerned.

(4) A contract with a local government under this section about the maintenance and operation of a State-controlled road may include arrangements about which powers of the local government are to be exercised by the chief executive and which of the powers are to be exercised by the local government for the State-controlled road.

(5) A local government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the local government's area.

(6) The chief executive may, for the State, carry out, or enter into contracts for, works on or adjacent to a State-controlled road at the request of the owner of adjacent land on the basis that the owner provides consideration, whether monetary or otherwise, as agreed between the chief executive and the owner.

(7) This section does not prevent the chief executive carrying out, or entering into contracts for the carrying out, of road works of a minor or emergency nature.

30 Obligations in carrying out of works or operation of roads by the chief executive

In carrying out works, or the operation of roads, mentioned in section 29 (Powers of chief executive for road works contracts etc.), the chief executive must ensure that the carrying out is done on a price competitive basis.

31 Contracts to encourage efficiency

(1) In entering into contracts of the kind mentioned in section 29 (Powers of chief executive for road works contracts etc.), the chief executive must ensure that open competition is encouraged.

(2) Subsection (1) does not apply to a contract with a person if the person is the sole invitee and enters into a price performance contract with the chief executive.

32 Cost sharing arrangements

The chief executive may arrange with another person (including a local government and a State government body) for the sharing by the chief executive with the other person of the cost of—

- (a) acquisition of land for transport infrastructure; or
- (b) road works on a State-controlled road; or
- (c) other works that contribute to the effectiveness and efficiency of the road network; or
- (d) the operation of a State-controlled road;

including all necessary preliminary costs associated with the acquisition, works or operation.

33 Prohibition on road works etc. on State-controlled roads

(1) A person must not, without lawful excuse or the written approval of the chief executive—

- (a) carry out road works on a State-controlled road; or
- (b) interfere with a State-controlled road or its operation.

Maximum penalty—200 penalty units.

(2) An approval may be subject to conditions decided by the chief executive.

(3) A person must not contravene a condition that applies to the person under subsection (2).

Maximum penalty—200 penalty units.

(4) Subsection (1) does not apply to a person who carries out maintenance of ancillary works and encroachments or landscaping that does not interfere with a State-controlled road or its operation.

34 Offender to pay cost of remedying unauthorised works

(1) If a person carries out works contrary to section 33(1) (Prohibition on road works etc. on State-controlled roads), the chief executive may—

- (a) dismantle or alter the works; or
- (b) remedy damage caused by the works.

(2) If the chief executive causes the works to be dismantled or altered or the damage to be remedied under subsection (1), the person is liable to pay to the chief executive the costs incurred by the chief executive.

35 Temporary occupation and use of land

To carry out road works, the chief executive may temporarily occupy and use land, including roads, and do anything on the land that is necessary or convenient to be done.

36 Notice of entry or permission to enter

(1) The person who is proposing to occupy or use land under section 35 (Temporary occupation and use of land) must—

- (a) give at least 3 days written notice to the owner or occupier of the land; or
- (b) obtain the written approval of the owner or occupier to the occupation or use.

(2) The notice must state—

- (a) the road works to be carried out; and
- (b) the use proposed to be made of the land; and
- (c) details of the things proposed to be done on the land; and
- (d) an approximate period when the occupation or use is expected to continue.

(3) A notice may be given under subsection (1) in relation to land even if it is proposed to resume the land for road works.

(4) After the end of 3 days after service of a notice under subsection (1), or with the agreement of the owner or occupier, the land may be entered and the road works specified in the notice carried out.

(5) If urgent remedial attention is required, subsection (1) does not apply but the person who is proposing to occupy or use the land must, if it is practicable, notify the owner or occupier of the land orally.

37 Compensation for physical damage from entry etc.

(1) An owner of land that is entered, occupied or used under section 35 (Temporary occupation and use of land) may give a written notice to the chief executive claiming compensation for physical damage caused by the entry, occupation or use or for the taking or consumption of materials.

(2) Compensation is not payable unless a claim is received by the chief executive within 1 year after occupation or use has ended.

(3) However, the chief executive may allow a claim to be made at a later time.

(4) Compensation awarded under this section must not be more than the compensation that would have been awarded if the land had been acquired.

38 Fencing State-controlled roads

(1) The chief executive does not have to contribute to the fencing of the whole or a part of the boundary between land and—

- (a) an existing State-controlled road; or
- (b) a road or land that is intended to become a State-controlled road;
or

- (c) a widening or deviation of a State-controlled road involving the acquisition of land.

(2) However, subsection (1)(b) does not apply to an existing road if the land is substantially fenced and the presence of the road will make the fencing ineffective.

(3) Subsection (1)(c) does not apply if the previous boundary of the road was substantially fenced.

39 Watercourses and road works

(1) To carry out road works, the chief executive may—

- (a) divert a watercourse; or
- (b) construct a watercourse, whether temporary or permanent.

(2) In taking action under subsection (1), the chief executive must consider the effect that the action will have on the physical integrity and flow characteristics of the watercourse.

(3) The chief executive may enter and occupy private land under section 35 (Temporary occupation and use of land) and carry out works that the chief executive considers necessary or desirable to enable a watercourse to operate effectively and efficiently.

PART 4—RELATIONSHIP WITH LOCAL GOVERNMENTS

40 Funds for works on, or operation of, local government roads etc.

(1) The chief executive may enter into an agreement with a local government under which the chief executive supplies funds to the local government for road works on a local government road, for other works that contribute to the effectiveness and efficiency of the road network or for the operation of a local government road.

(2) The agreement—

- (a) must provide for the works or operation to be carried out in accordance with an agreement between the chief executive and

the local government that is designed to ensure value for money in the application of the funds; and

- (b) may be subject to other conditions.

41 Improvement of State-controlled road as an economic alternative to improvement of the local road network

If a local government concludes that improvements to a State-controlled road in its area would be beneficial to the local road network, the local government may make financial arrangements with the chief executive for the improvements to be made.

42 Impact of certain local government decisions on State-controlled roads

(1) A local government must obtain the chief executive's written approval if—

- (a) it intends to carry out road works on a local government road or make changes to the management of a local government road; and
- (b) the works or changes would—
- (i) require the carrying out of road works on a State-controlled road; or
 - (ii) otherwise have a significant adverse impact on a State-controlled road; or
 - (iii) have a significant impact on the planning of a State-controlled road or a future State-controlled road.

(2) Subsection (1) does not apply if the chief executive has considered the works or changes as part of consideration of a development application under IDAS, within the meaning of the *Integrated Planning Act 1997*.

(3) The chief executive may make guidelines to which local governments must have regard in deciding whether an approval of the chief executive under subsection (1) is required.

(4) An approval by the chief executive under subsection (1) may be subject to conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes will have.

(5) Subsection (1) does not apply if the conditions applied and enforced by the local government for the road works or changes comply with permission criteria fixed by the chief executive.

(6) The permission criteria may include conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes will have.

(7) A local government must comply with conditions that apply to it under this section.

(8) If a local government contravenes subsection (1) or a condition that applies to it under this section, the local government is liable to compensate the chief executive for the cost of road works to State-controlled roads that are reasonably required because of the contravention.

(9) An approval by the chief executive under subsection (1) must be given—

- (a) within 21 days after receiving the application for approval; or
- (b) within a longer period notified to the local government by the chief executive within the 21 day period.

(10) If—

- (a) a local government applies for an approval under subsection (1); and
- (b) the chief executive does not respond to the application within 21 days after receiving the application;

the chief executive is taken to have given approval at the end of the 21 days.

(11) In this section—

“future State-controlled road” means a road or land that the chief executive has notified the local government in writing is intended to become a State-controlled road.

(12) The chief executive must cause a copy of each notice under subsection (11) to be published in the gazette.

43 Distraction of traffic on motorways

(1) A local government must obtain the chief executive’s written approval if it intends to approve the erection, alteration or operation of an advertising sign or other advertising device that would be—

- (a) visible from a motorway; and
- (b) beyond the boundaries of the motorway; and
- (c) reasonably likely to create a traffic hazard for the motorway.

(2) The chief executive may make guidelines to which local governments must have regard in deciding whether an approval of the chief executive under subsection (1) is required for particular motorways.

(3) An approval by the chief executive under subsection (1) may be subject to conditions.

(4) Subsection (1) does not apply if the conditions applied by the local government to the erection, alteration or operation of the sign or device comply with permission criteria fixed by the chief executive.

(5) The permission criteria may include conditions.

(6) A local government must comply with conditions that apply to it under this section.

(7) An approval by the chief executive under subsection (1) must be given—

- (a) within 21 days after receiving the application for approval; or
- (b) within a longer period notified to the local government by the chief executive within the 21 day period.

(8) If—

- (a) a local government applies for an approval under subsection (1); and
- (b) the chief executive does not respond to the application within 21 days after receiving the application;

the chief executive is taken to have given approval at the end of the 21 days.

(9) In this section—

“motorway” includes a road or land that the chief executive has notified the local government in writing is intended to become a motorway.

(10) The chief executive must cause a copy of each notice under subsection (9) to be published in the gazette.

44 Effect of decisions of Planning and Environment Court**(1) If—**

- (a) an approval under section 42(1) (Impact of certain local government decisions on State-controlled roads) is subject to conditions; and
- (b) a local government imposes conditions on the road works or changes to which the approval relates; and
- (c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the conditions of the approval under section 42(1), the conditions of the approval are taken to be amended accordingly.

(2) If—

- (a) there are permission criteria relevant to road works or changes mentioned in section 42; and
- (b) a local government imposes conditions on the road works or changes; and
- (c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the permission criteria, the permission criteria are taken to be amended accordingly in their application to the road works or changes.

(3) If—

- (a) an approval under section 43(1) (Distraction of traffic on motorways) is subject to conditions; and
- (b) a local government imposes conditions on the relevant erection, alteration or operation of the sign or other device; and
- (c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the conditions of the approval under section 43(1), the conditions of the approval are taken to be amended accordingly.

(4) If—

- (a) there are permission criteria relevant to the erection, alteration or operation of a sign or other device mentioned in section 43; and
- (b) a local government imposes conditions on the erection, alteration or operation; and
- (c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the permission criteria, the permission criteria are taken to be amended accordingly in their application to the erection, alteration or operation.

(5) The Planning and Environment Court is not to amend conditions as mentioned in this section without giving the chief executive a chance to be heard.

45 Management of particular functions on State-controlled roads by local governments

(1) A local government may exercise, for a State-controlled road in its area, all the powers that it may exercise for a local government road in its area.

(2) However, if there is a contract of the kind mentioned in section 29(4) (Powers of chief executive for road works contracts etc.) between the chief executive and a local government, the exercise of the powers must be done as required by the contract.

(3) If there is no contract of the kind mentioned in section 29(4) between the chief executive and a local government, the chief executive may direct the local government not to exercise any or some of its powers for a State-controlled road specified in the direction.

(4) A direction under subsection (3) may be subject to conditions.

(5) A local government must comply with directions or conditions under this section.

(6) The exercise of a power by a local government under this section is not a contravention of this Act.

PART 5—MANAGEMENT OF STATE-CONTROLLED ROADS

Division 1—Prevention of damage and ensuring safety

46 Temporary restrictions on use of State-controlled roads

(1) If the chief executive considers that it is appropriate that a decision be made to prevent damage to road transport infrastructure or to ensure the safety of road users and other persons, the chief executive may make a written decision that—

- (a) a State-controlled road is temporarily closed to all traffic or traffic of a particular class; or
- (b) a State-controlled road may, during a specified limited period, only be used—
 - (i) at specified times; or
 - (ii) by particular classes of vehicles; or
 - (iii) in accordance with conditions (including restrictions on the weight of loads of vehicles) fixed by the chief executive.

(2) A decision under subsection (1) must be advertised by appropriate signs and, if practicable, by notice in a newspaper circulating in the area.

(3) Road users must comply with a decision in force under subsection (1).

Maximum penalty—200 penalty units.

(4) Neither the State nor the chief executive is liable for damage or injury caused directly because of a contravention of a decision in force under subsection (1).

47 Removal of materials etc.

(1) A person must not, without lawful excuse, damage, remove or interfere with naturally occurring materials, stockpiles of materials, watercourses, road works or ancillary works and encroachments on a State-controlled road.

Maximum penalty—200 penalty units.

(3) A person must not deposit rubbish or abandon goods or materials on a State-controlled road other than at places approved by, and under conditions fixed by, the chief executive.

Maximum penalty—200 penalty units.

48 Recovery of cost of damage

(1) If—

- (a) a person intentionally, recklessly or negligently causes damage to road works or ancillary works and encroachments on a State-controlled road, whether or not an offence is committed; and
- (b) the chief executive repairs the damage or replaces or reconstructs as necessary the road works or ancillary works and encroachments;

the person is liable to pay to the chief executive the cost of repair, replacement or reconstruction.

(2) If—

- (a) the damage is caused by the operation of a vehicle; and
- (b) the driver of the vehicle is unknown or cannot be located;

the person in whose name the vehicle is registered is liable for the costs of repair, replacement or reconstruction for which the driver would be liable.

(3) Subsection (2) does not apply if the vehicle was being used without the agreement or knowledge of the person in whose name the vehicle is registered.

(4) If—

- (a) a court finds a person guilty of an offence against this Act; and
- (b) in committing the offence, the person caused damage to road works or ancillary works and encroachments;

the court may, in addition to imposing a penalty, order the person to pay an amount towards the cost of repairing the damage.

49 Assessment of impacts on State-controlled roads from certain activities

(1) This section applies if—

- (a) the chief executive considers the carrying on of an activity prescribed under a regulation is having, or will have, a significant adverse impact on a State-controlled road; and
- (b) the activity is not for—
 - (i) a significant project under the *State Development and Public Works Organisation Act 1971*; or
 - (ii) development declared under a planning scheme under the *Integrated Planning Act 1997* to be assessable development.

(2) The chief executive may require the entity carrying out the activity to provide information, within a reasonable time, that will enable the chief executive to assess the impact.

(3) After assessing the impact, the chief executive may decide to do 1 or more of the following—

- (a) give the entity a direction about the use of the road to lessen the impact; or
- (b) require the entity—
 - (i) to carry out works to lessen the impact; or
 - (ii) to pay an amount as compensation for the impact.

(4) The chief executive may require the works to be carried out or the amount to be paid before the impact commences or intensifies.

(5) The amount required to be paid under subsection (3)(b)(ii) is a debt payable to the chief executive and may be recovered in a court of competent jurisdiction.

(6) The regulation mentioned in subsection (1)(a)—

- (a) must contain a process under which the chief executive's decision may be reviewed; and
- (b) may contain a process for enforcing the decision.

Division 2—Ancillary works and encroachments and roadside facilities***Subdivision 1—General rules for ancillary works and encroachments*****50 Ancillary works and encroachments**

(1) The chief executive may construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road.

(2) The chief executive may, by gazette notice, decide that specified ancillary works and encroachments must not be constructed, maintained, operated or conducted on State-controlled roads, or on State-controlled roads in a specified district, without the written approval of the chief executive.

(3) A person must not construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road contrary to a notice under subsection (2).

Maximum penalty—200 penalty units.

(4) Subsection (3) does not apply to the construction, maintenance, operation or conduct of ancillary works and encroachments on a State-controlled road if the construction, maintenance, operation or conduct—

- (a) conforms to requirements specified by the chief executive by gazette notice; or
- (b) is done as required by a contract entered into with the chief executive.

(5) An approval or requirements under this section may be subject to conditions (including conditions about the payment of fees and other charges) fixed by the chief executive.

(6) If approval is required under subsection (2) for ancillary works and encroachments that are road access works, the approval—

- (a) may only be given if there is a permitted road access location under a decision in force under section 62(1) in relation to the road access works;³ and

³ For an application to obtain a permitted road access location, see section 62 (Management of access between individual properties and State-controlled roads).

- (b) is in force only while the decision specifying the permitted road access location remains in force.

(7) A thing is not done contrary to this section if it is permitted under the *Land Act 1994*, the *Transport Operations (Road Use Management) Act 1995* or an Act about local government.

51 Presumptions about advertising notices

(1) This section applies to a prosecution for an offence against section 50(3) in relation to an advertising notice.

(2) Each person whose product or service is advertised on the notice is taken to maintain the notice, unless the person proves the advertisement was placed without the person's knowledge or permission.

52 Alteration etc. of ancillary works and encroachments

(1) If ancillary works and encroachments are constructed, maintained, operated or conducted contrary to section 50 (Ancillary works and encroachments), the chief executive may—

- (a) cause them to be altered, relocated, made safe or removed; or
- (b) for activities—direct that their conduct be altered or that they stop being conducted.

(2) A person who constructed, maintained or operated ancillary works and encroachments contrary to section 50 is liable to pay to the chief executive the cost of altering or relocating them, making them safe or removing them.

(3) If ancillary works and encroachments are removed under subsection (1), the chief executive may cause them to be sold or destroyed.

(4) If the chief executive is of the opinion that ancillary works and encroachments, or the use of ancillary works and encroachments, that were constructed, maintained, operated or conducted on a State-controlled road under an approval, requirements or contract under section 50—

- (a) by themselves or with other factors—
 - (i) are creating or may in the future create a traffic hazard; or
 - (ii) are reducing or may in the future reduce safety; or

- (iii) are having or may in the future have an adverse effect on traffic operations; or
- (b) require emergency action; or
- (c) have become or may in the future become an obstacle to the carrying out of road works on the road or to the construction, augmentation, alteration or maintenance of public utility plant on the road;

the chief executive may cause them to be, or direct that they be, altered, relocated, made safe or removed or, for activities, direct that their conduct be altered or that they stop being conducted.

(5) Subsection (4) does not apply to road access works.

(6) A person must comply with a direction under this section.

Maximum penalty—200 penalty units.

(7) If ancillary works and encroachments are altered, relocated, made safe or removed because of a direction under subsection (4), the chief executive may enter into an agreement with the owner of the ancillary works and encroachments for making a contribution towards the cost of the alteration, relocation, making safe or removal.

Subdivision 2—Special arrangements about access

53 Definitions

In this subdivision—

“**declaration**” has the meaning given by section 54(1).

“**land**”, adjacent to a State-controlled road, includes land that is not adjacent to the road but is benefited by an easement, registered under the *Land Title Act 1994*—

- (a) that is over land that is adjacent to the road; and
- (b) that starts at the boundary between the land mentioned in paragraph (a) and the road.

“**owner**” includes a lessee under the *Land Act 1994*.

“**permitted road access location**” means a permitted road access location under a decision in force under section 62(1).

“road access location” means a location on a property boundary between land and a road for the entry or exit of traffic.

“State-controlled road” includes a road or land that the chief executive has notified the relevant local government in writing is intended to become a State-controlled road.

54 Limited access roads

(1) The chief executive, by gazette notice complying with sections 56 and 57, may declare part or all of a State-controlled road to be a limited access road (a **“declaration”**).

(2) For each limited access road proposed to be declared, the chief executive must make a policy about the application of section 62 to access between the limited access road and adjacent land.

(3) For a State-controlled road that is a limited access road under section 516(1),⁴ the chief executive may—

- (a) develop a policy about the application of section 62 to access between the road and adjacent land; and
- (b) publish a gazette notice complying with section 57 about the policy.

(4) If a gazette notice mentioned in subsection (1) or (3) is published for a limited access road, the chief executive—

- (a) must ensure there is always a policy for the road while it is a limited access road; and
- (b) by gazette notice complying with section 57, may replace the policy as it exists at any time for the road; and
- (c) without a gazette notice, may amend the policy under section 58; and
- (d) must apply the policy as made, amended or replaced.

4 Section 516 (Transitional—access-limited roads)

55 Local government to be consulted on proposed declaration or policy

The chief executive must, before giving effect to a proposal to publish a gazette notice to make, amend or revoke a declaration or to make, amend or replace a policy for a limited access road—

- (a) notify each local government, that the chief executive considers is affected by the proposal, of the proposal; and
- (b) give each notified local government a reasonable opportunity to make a submission to the chief executive on the proposal.

56 Information in s 54 gazette notice about a declaration

A gazette notice under section 54(1) must state—

- (a) the reasons for the declaration; and
- (b) that any person whose interests are affected by the declaration may—
 - (i) under section 485⁵—ask for the decision to be reviewed and appeal against the reviewed decision; and
 - (ii) under the *Transport Planning and Coordination Act 1994*, part 5⁶—ask for the decision or the reviewed decision to be stayed.

57 Information in s 54 gazette notice about new or replacement policy

(1) A gazette notice under section 54(1), (3)(b) or (4)(b) for a limited access road must state the following—

- (a) that there is a policy, that will be applied, about the application of section 62 to access between the road and adjacent land;
- (b) if the policy is replacing another policy, that a policy identified in the notice is being replaced;
- (c) the text of section 61;

5 Section 485 (Review of and appeals against decisions)

6 *Transport Planning and Coordination Act 1994*, part 5 (Review of and appeals against decisions)

- (d) either—
 - (i) the text of the policy; or
 - (ii) a notice that the policy is available for inspection, free of charge, during business hours at stated places;
- (e) that the policy may be amended at any time without a gazette notice if—
 - (i) the amendment merely changes or repeals specific provision for 1 or more particular properties; and
 - (ii) the owner or occupier of each property has been given written notice of the amendment;
- (f) that any person whose interests are affected by a policy, or, if the policy is a replacement policy, any change of the policy being replaced, may—
 - (i) under section 485—ask for the decision to be reviewed and appeal against the reviewed decision; and
 - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

(2) If the policy for the limited access road is replacing another policy, the rights mentioned in subsection (1)(f) of a person mentioned in subsection (1)(f) are limited to any change the policy makes to the replaced policy.

58 Amendment of policy for a limited access road in limited circumstances

(1) The chief executive may amend a policy for a limited access, as opposed to replacing the policy, if—

- (a) the amendment is a mere change or repeal of a specific provision for 1 or more particular properties; and
- (b) the chief executive has given the owner or occupier of each property written notice of the amendment.

(2) The written notice mentioned in subsection (1)(b) must state—

- (a) the notice is given under this section; and
- (b) the reasons for the decision; and

- (c) that any person whose interests are affected by the decision may—
 - (i) under section 485—ask for the decision to be reviewed and appeal against the reviewed decision; and
 - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

59 Gazette notices must show location of limited access road

A gazette notice under section 54 must contain enough information to allow the location of the limited access road to be identified, for example by including the following information—

- (a) the points at which the limited access road starts or ends;
- (b) its alignment;
- (c) the boundaries of the State-controlled road to which limitation of access is to be applied.

60 Advertisement of gazette notice

The publishing of a gazette notice under section 54 must be advertised in a newspaper circulating in the area of the limited access road, or if there is no newspaper circulating in the area, in a newspaper circulating throughout the State.

61 Offence for limited access roads

A person must not construct or change a physical means of entry or exit for traffic between land and a limited access road without first obtaining a decision under section 62(1) that authorises the construction or change.

Maximum penalty—200 penalty units.

62 Management of access between individual properties and State-controlled roads

(1) The chief executive may, for 1 or more State-controlled roads and particular adjacent land, on application by a person with an interest in the

land or the chief executive's own initiative, make a written decision stating any of the following—

- (a) the location or locations at which access between the land and the road is permitted (a “**permitted road access location**”);
- (b) restrictions on the use of a permitted road access location;
- (c) conditions on the use of a permitted road access location;
- (d) where particular road access works, or a stated type of road access works, must be situated;
- (e) conditions or restrictions on the use of road access works;
- (f) that access at a location or locations is no longer permitted;
- (g) that road access works for construction at a place must be of a stated type, standard or extent or be constructed in a stated way;
- (h) that either the type, construction or extent of existing road access works must be changed in a way stated by the chief executive or the use of the works must be discontinued;
- (i) that all access between the road and the land is prohibited or no longer prohibited;
- (j) that stated existing road access works must be removed by the owner within a stated reasonable time;
- (k) without limiting paragraphs (f) to (j), that anything mentioned in paragraphs (a) to (e) is changed or must be changed as stated in the decision.

(2) A condition or restriction under subsection (1) may, for example, be any of the following—

- (a) a prohibition on the use of the permitted road access location or road access works by pedestrians;
- (b) a prohibition on turns by vehicles going in or out of the land;
- (c) a restriction on the type and number of vehicles the owner, occupier or person who applied for the decision may allow to use the permitted road access location;
- (d) a requirement that the owner, occupier or person who applied for the decision take reasonable, or stated reasonable, steps to ensure the permitted road access location is used by others in accordance with the conditions;

- (e) a restriction on when the permitted road access location may be used.

(3) All or part of a decision may be limited to a stated period by reference to time or circumstance.

(4) A decision must be consistent with any policy under section 54 that is applicable to the decision.

63 Chief executive may require additional information from applicant

The chief executive may—

- (a) require an applicant for a decision under section 62(1) to give the chief executive any additional information the chief executive reasonably needs to decide the application; and
- (b) refuse to consider the application until the applicant gives the required information.

64 Decision under s 62(1) may impose construction or financial obligation

A decision under subsection 62(1) made on application by a person with an interest in the land, other than on an application in compliance with a direction given under section 69, may include either or both of the following conditions—

- (a) that the applicant construct, pay for, or contribute to the cost of, stated road access works to be constructed to a stated standard;
- (b) that the applicant maintain, pay for, or contribute to the cost of, maintaining stated road access works to a stated standard.

65 Limitation on new decisions under s 62(1)

If there is a permitted road access location for land, the chief executive may make a new decision under section 62(1) for the land on the chief executive's own initiative only if the chief executive considers the permitted road access location, road access works associated with it, or the use of either of them—

- (a) by themselves, or with other factors—

- (i) are creating or may in the future create a traffic hazard; or
- (ii) are reducing or may in the future reduce safety; or
- (iii) are having or may in the future have an adverse effect on traffic operations; or
- (b) require emergency action; or
- (c) has become or may in the future become an obstacle to—
 - (i) the carrying out of road works on a State-controlled road; or
 - (ii) the construction, augmentation, alteration or maintenance of ancillary works and encroachments, or public utility plant, on a State-controlled road.

66 Road access works within State-controlled road

(1) To remove doubt, it is declared that—

- (a) a decision under section 62(1) does not give rise to any rights whether beneficial or otherwise in any property that is on, or part of, a State-controlled road; and
- (b) section 62 does not limit the chief executive's powers to change, remove, construct or deal with road access works to the extent they are on, or part of, a State-controlled road.

(2) Also, it is declared that the chief executive is not obliged to consider making or obliged to make a decision for a person under section 62(1) in relation to road access works to the extent they are on, or part of, a State-controlled road if none of the following circumstances relevant to the decision exist—

- (a) action by the chief executive in substance changing the effect of a previous decision, binding on the person, in force under section 62(1) about anything mentioned in section 62(1)(a) to (c);
- (b) action by the chief executive affecting a written agreement under this Act between the chief executive and the person bound by a decision under 62(1).

(3) Subsection (2) does not limit the discretion of the chief executive under section 62(1).

67 Notice of decision under s 62(1)

(1) If the chief executive makes a decision under section 62(1), the chief executive must give written notice of the decision to each of the following persons—

- (a) the owner of the land;
- (b) the occupier of the land;
- (c) any person who may have applied for the decision.

(2) The notice must state the following—

- (a) the notice is given under this section;
- (b) the reasons for the decision;
- (c) the person is bound by the decision because of section 70;
- (d) the text of section 70;
- (e) that any person whose interests are affected by the decision may—
 - (i) under section 485—ask for the decision to be reviewed and appeal against the reviewed decision; and
 - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed;
- (f) that there is no guarantee of the continuation of road access arrangements, as this depends on future traffic safety and efficiency circumstances.

(3) A person who has an interest in particular land may ask the chief executive, in writing, to give the person a copy of any decision in force under section 62(1) for the land.

(4) The chief executive must give the person the copy.

68 Other persons may, by notice, also become bound by a decision under s 62(1)

(1) If a particular person is not already bound by a decision under section 62(1), the chief executive may—

- (a) give the person a copy of the decision and of section 70; and

(b) notify the person, in writing, that the person is bound, under this section, by the decision.

(2) A person notified under subsection (1) is bound by the decision.

69 Direction to owner or occupier to apply for permitted road access location

(1) This section applies to land adjacent to a State-controlled road, if there is no decision in force under section 62(1) for the land.

(2) The chief executive may give a person who is the owner or occupier of the land a written direction that the person must do either or both of the following—

(a) within 28 days of the direction, apply under section 62(1) to have the chief executive make a decision about access between the land and the State-controlled road;

(b) not use, or permit anyone else to use, any road access location on any boundary between the land and the State-controlled road until the person has applied to the chief executive for a decision under section 62(1).

(3) The direction must state the penalty for not complying with the direction.

(4) A person given a direction under subsection (2) must comply with the direction.

Maximum penalty for subsection (4)—200 penalty units.

70 Offences about road access locations and road access works, relating to decisions under s 62(1)

(1) This section applies to—

(a) a person who has been given notice under section 67 or 68 of a decision under section 62(1) about access between a State-controlled road and adjacent land; and

- (b) all present owners of that adjacent land if the decision was made in conjunction with a development approval issued under the *Integrated Planning Act 1997*;⁷ and
- (c) all future owners of that adjacent land if—
 - (i) the decision was made in conjunction with a development approval issued under the *Integrated Planning Act 1997*; and
 - (ii) the approval does not indicate that the decision does not apply to future owners.⁸

(2) A person to whom this section applies must not—

- (a) obtain access between the land and the State-controlled road other than at a location at which access is permitted under the decision; or
- (b) obtain access using road access works to which the decision applies, if the works do not comply with the decision and the noncompliance was within the person's control; or
- (c) obtain any other access between the land and the road contrary to the decision; or
- (d) use a road access location or road access works contrary to the decision; or
- (e) contravene a condition stated in the decision; or
- (f) permit another person to do a thing mentioned in paragraphs (a) to (e); or
- (g) fail to remove road access works in accordance with the decision.

Maximum penalty—200 penalty units.

(3) However, subsection (2)(g) does not apply to a person who is bound by the decision because of section 68.

⁷ For access to approval details, see the *Integrated Planning Act 1997*, section 5.7.4 (Documents assessment manager must keep available for inspection and purchase).

⁸ For access to approval details, see the *Integrated Planning Act 1997*, section 5.7.4 (Documents assessment manager must keep available for inspection and purchase).

71 Chief executive may take steps to prevent or deal with contravention

(1) The chief executive may take reasonable and necessary steps to prevent, or protect the public from the consequences of, a person's contravention of section 70.

(2) If the chief executive takes steps under subsection (1), because a person contravenes or attempts to contravene section 70, the chief executive may recover from the person as a debt the reasonable costs of taking the steps.

72 Chief executive may supply or contribute to new access arrangements

(1) This section applies if a decision under section 62(1) has an effect mentioned in section 73(1) or (2), and section 74 does not prevent the payment of compensation or remove the chief executive's liability to pay compensation.

(2) The chief executive may enter into an agreement with the owner, or the owner and the occupier, of the land for—

- (a) the supply by the chief executive of, or a contribution towards the supply by the chief executive of, alternative road access works between the State-controlled road and the adjacent land or between the adjacent land and another road; or
- (b) the carrying out, or a contribution towards the carrying out, of other works in relation to the land.

73 Compensation

(1) This section applies if a decision under section 62(1) has the effect that all access between a State-controlled road and particular adjacent land is prohibited and—

- (a) there is—
 - (i) no practical alternative road access location for the land, that is, the land becomes effectively landlocked; and
 - (ii) no previous decision in force under section 62(1) under which the land was effectively landlocked; or

- (b) there is a permitted road access location between the land and the road, and paragraph (a) does not apply.

(2) This section also applies if a decision under section 62(1) has the effect of changing in substance the effect of a previous decision in force under section 62(1) about anything mentioned in 62(1)(a) to (c) other than in a way that has the effect mentioned in subsection (1).

(3) However, this section only applies if the owner or occupier claiming compensation is adversely affected by the decision and—

- (a) an agreement can not be reached with the chief executive under section 72; or
- (b) the chief executive decides it is not practicable to take action under section 72.

(4) The owner or occupier may recover as a debt from the chief executive compensation for the diminution in value because of the prohibition or change.

(5) To remove doubt, it is declared that—

- (a) in deciding compensation, access to and from the land that could be made available at other locations must be taken into account; and
- (b) compensation is not payable to the extent that the diminution in value is attributable to a prohibition or change that affects—
- (i) the supply of access to and from a traffic stream; or
- (ii) road works mentioned in paragraph (b) of the definition “road access works”.

74 Cases where compensation not payable

(1) Compensation is payable under section 73 (Compensation where access prohibited) to a person only if a claim is given to the chief executive within 1 year after—

- (a) the day when the relevant decision took effect; or
- (b) the day when the person was first notified by the chief executive of the decision;

whichever is the later.

(2) However, the chief executive may allow a claim to be made at a later time.

(3) The chief executive is not liable to pay compensation for action under this subdivision in relation to land if action is taken to acquire the land.

(4) Also, the chief executive is not liable to pay compensation for the effect of a decision under section 62(1) made on an application by a person with an interest in the land in any of the following circumstances—

(a) if—

- (i) there is a proposed, ongoing or completed development of the land that involves a material change of use of premises or a reconfiguration of a lot; and
- (ii) the development was taken into account in making the decision, and the decision has the effect mentioned in section 73(1)(a);

(b) if—

- (i) there is a proposed, ongoing or completed development of the land that—
 - (A) involves a material change of use of premises or a reconfiguration of a lot; or
 - (B) has had or is likely to have a significant impact on traffic safety or efficiency on the State-controlled road to which the decision relates; and
- (ii) the development was taken into account in making the decision, and the decision has the effect mentioned in section 73(1)(b);

(c) if the decision has the effect mentioned in section 73(2).

(5) Subsection (4) applies whether or not the application results from action taken under section 69.

(6) For subsection (4)(a) and (b), “development”, “material change of use”, “premises” and “reconfiguration of a lot” have the meaning given by the *Integrated Planning Act 1997*, schedule 10.⁹

9 *Integrated Planning Act 1997*, schedule 10 (Dictionary)

75 Conditions in development approval under Integrated Planning Act 1997

For sections 72 to 74, if—

- (a) a development approval under the *Integrated Planning Act 1997* includes conditions about access between land and a State-controlled road; and
- (b) the conditions were included because of the chief executive's response as a concurrence agency for the development application; and
- (c) the development approval has not lapsed under that Act;

a decision, that includes the conditions, is taken to be in force under section 62(1) for the proposed development of the land.

Subdivision 3—Roadside facilities**76 Roadside facilities**

(1) The chief executive may supply, or enter into an agreement with another person for the supply of, roadside service centres, roadside rest facilities and other roadside businesses adjacent to or near State-controlled roads.

(2) The agreement may include—

- (a) arrangements for supplying access to the facility from the road; and
- (b) provision for payment of amounts to the chief executive, whether by lump sum or annual rental, in consideration for supplying the access or for supplying access to the traffic stream.

Division 3—Public utility plant on State-controlled roads**77 Application div 3**

This part does not apply to not apply to—

- (a) public utility plant constructed under the *Electricity Act 1994*; or

- (b) gas infrastructure, or the carrying out of gas infrastructure work, under the *Gas Supply Act 2003*.

78 Location

For the purposes of this division, the location of public utility plant on a State-controlled road includes the line, level and boundary of the plant on the road.

79 Chief executive's requirements for public utility plant

(1) The chief executive may, by written notice to the owner of public utility plant on a State-controlled road, make requirements about matters prescribed under a regulation in relation to the plant.

(2) The requirements may include the imposition of conditions, including conditions about the payment of a fee or other charge fixed by the chief executive.

80 Specification of chief executive's requirements about public utility plant

(1) The construction, augmentation, alteration or maintenance of public utility plant on a State-controlled road must be undertaken in accordance with the chief executive's requirements and at the expense of the owner of the plant.

(2) Road works on a State-controlled road made necessary by the construction, augmentation, alteration or maintenance of public utility plant on a State-controlled road must be undertaken in accordance with the chief executive's requirements and at the expense of the owner of the plant.

(3) Requirements mentioned in subsection (1) or (2) are to be notified in writing to the owner of the plant within a reasonable period.

81 Information by owner of public utility plant to chief executive

(1) A person who wants to take action mentioned in section 80 (Specification of chief executive's requirements about public utility plant) must give a written notice to the chief executive of the person's intention to carry out work on a State-controlled road within a reasonable time before taking the action.

(2) If public utility plant is constructed, augmented, altered or maintained on a State-controlled road, the owner of the plant must prepare records that adequately define the location of the plant on the road at the time of the construction, augmentation, alteration or maintenance of the plant.

(3) The owner of public utility plant on a State-controlled road must, if asked by the chief executive, supply information to the chief executive to define adequately the location of the plant in a specified area.

Maximum penalty for subsection (3)—40 penalty units.

82 Liability for damage or expenses

(1) Unless the chief executive otherwise agrees, the chief executive is not liable for damage caused by the chief executive to public utility plant on a State-controlled road if—

- (a) the chief executive had, before the damage was caused, asked for information under section 81(3) (Information by owner of public utility plant to chief executive) from the owner of the plant and—
 - (i) the owner had not, within a reasonable time, complied with the request; and
 - (ii) the damage was caused because of the failure to comply with the request; or
- (b) information supplied to the chief executive under section 81(3) does not define in adequate detail the location of the plant and the damage was caused because of the failure to define in adequate detail the location of the plant; or
- (c) the damage was caused because of the plant having been constructed, augmented, altered or maintained other than under the chief executive's requirements under this division.

(2) If the chief executive incurs additional expense in carrying out road works on a State-controlled road because—

- (a) the owner of public utility plant had not supplied within a reasonable time information asked for by the chief executive under section 81(3); or
- (b) information supplied to the chief executive did not define in adequate detail the location of public utility plant; or

- (c) public utility plant had not been constructed, augmented, altered or maintained under the chief executive's requirements;

the owner of the plant is liable to pay to the chief executive the additional expense.

(3) If the construction of road works by or for the chief executive requires the removal or replacement of public utility plant on a State-controlled road, the chief executive cannot be compelled to approve the replacement or reconstruction of the plant in its previous location and form.

(4) If the chief executive approves the replacement or reconstruction of plant, the replacement or reconstruction must be done under the chief executive's requirements.

83 Chief executive and owner of public utility plant may share costs

The chief executive may arrange with the owner of public utility plant (whether existing or proposed) for the sharing by the chief executive and the owner of the cost of all or any of—

- (a) acquisition of land associated with the plant; or
- (b) construction, augmentation, alteration or maintenance of the plant; or
- (c) construction of road works affected by the plant;

including all necessary preliminary costs associated with the acquisition, construction, augmentation, alteration or maintenance.

PART 6—FRANCHISED ROADS

84 Objectives of part

The objectives of this part are—

- (a) to assist and encourage private investment in the construction, maintenance and operation of road transport infrastructure; and

- (b) by the involvement of private investment, to enable road transport infrastructure projects to be undertaken at an earlier time than would otherwise be possible; and
- (c) to provide an appropriate management structure for the construction, maintenance and operation of road transport infrastructure on a commercial basis.

85 Power to enter into road franchise agreements

(1) The Minister may, for the State, enter into an agreement (a “**road franchise agreement**”) with a person under which, or as part of which, the person is to invest in the construction, maintenance or operation of road transport infrastructure.

(2) The agreement must be consistent with—

- (a) the coordination plan; and
- (b) the objectives of this Act; and
- (c) the current transport infrastructure strategies; and
- (d) the obligations about government supported transport infrastructure set out in section 9.

(3) The agreement may include, for example—

- (a) provisions about the ownership of the road transport infrastructure; or
- (b) provisions about tolls for the use of the road transport infrastructure.

86 Tabling of road franchise agreements

The Minister must table each road franchise agreement, and each amendment of a road franchise agreement, in the Legislative Assembly as soon as practicable after it is entered into.

87 Report on operation of part

Each annual report of the department must include a report on the operation of this part during the financial year to which the report relates.

88 Recovery of money

If a road franchise agreement provides that the Minister may recover an amount from a franchisee, the amount may be recovered as a debt payable by the franchisee to the State.

89 Rateability of land

(1) In this section—

“**road franchise agreement land**” means land on which is situated road transport infrastructure to which a road franchise agreement applies.

(2) A regulation may provide that road franchise agreement land is not rateable under the *Local Government Act 1993* or the *City of Brisbane Act 1924*.

90 Application of other provisions of this chapter

(1) The provisions of the other parts of this chapter, and of regulations made for this chapter, apply to a franchised road as if it were a State-controlled road.

(2) A regulation may—

- (a) prescribe changes to the way the provisions apply to a particular franchised road; or
- (b) declare that some of the provisions do not apply to a particular franchised road.

91 Guarantees and undertakings

For the purpose of giving guarantees or undertakings to a franchisee, the following sections of the *Statutory Bodies Financial Arrangements Act 1982* apply, with all necessary changes and any changes prescribed by regulation, to the franchisee as if the franchisee were a statutory body within the meaning of the Act—

- section 14 (Conditions precedent to financial arrangements and other matters)
- section 16 (Guarantees for the State)
- section 18 (Requirement for security)

- section 19 (Guarantee may include waiver of immunity and other provisions)
- section 20 (Guarantee not affected by transfer of liability)
- part 3, division 3 (Consequences if payment required under guarantee).

PART 7—TOLL ROADS

Division 1—Preliminary

92 Definitions for pt 7

In this part—

“**administration charge**”, for a toll, means the administration charge set in relation to non-payment of the toll.

“**designated vehicle**” means a vehicle, other than an exempt vehicle, of a type liable for a toll under a regulation under section 93.

“**E toll only pay point**”, means a part of a toll plaza, designated by appropriate signs, for the exclusive use of vehicles using the E toll system.

“**E toll system**” means an electronic system operated by a toll road operator for the recording, or the recording and meeting, of liability for a toll for use of the toll road.

“**exempt vehicle**” means a vehicle exempted under an Act or an Act or law of the Commonwealth or another State from the payment of tolls on roads.

“**prescribed time**”, for a notice given to a person under division 3, means 30 days, or the greater number of days stated in the notice, after the notice is given.

“**registered operator**”, of a vehicle that has passed through a toll plaza, means a person who, when the vehicle passed through the toll plaza, was the person in whose name the vehicle was registered under a registration Act.

“registration Act” means—

- (a) the *Transport Operations (Road Use Management) Act 1995* or another Act dealing with the registration of vehicles prescribed under a regulation; or
- (b) a law of the Commonwealth or another State dealing generally with the registration of vehicles.

“toll plaza” means a part of a toll road where facilities are constructed for either or both of the following—

- (a) the collection of tolls from the drivers of vehicles using the toll road;
- (b) the operation of an E toll system for vehicles using the toll road.

“toll road” means a road or part of a road declared under a regulation under section 93 to be a toll road.

“toll road operator” means—

- (a) if the relevant toll road is the subject of a road franchise agreement—the person stated in the agreement as the person who is to operate the toll road; or
- (b) otherwise—the chief executive.

“valid account”, for an E toll system operating for a toll road, means an account that—

- (a) has been established by a person for using the E toll system; and
- (b) is, under the arrangements under which the account was established, available to be operated for using the toll road.

Division 2—Toll roads and toll payment requirements

93 Tolls

(1) A regulation may declare that a State-controlled road or part of a State-controlled road, or a franchised road or part of a franchised road, is a toll road.

(2) A regulation under subsection (1) must state—

- (a) when tolls become payable for use of the toll road; and
- (b) the types of vehicles liable for tolls; and

- (c) for the use of toll road by each of the types of vehicles—
 - (i) the amount of toll payable at each toll plaza; or
 - (ii) another way that is authorised for the setting and publication of the amount of toll payable at each toll plaza, including any necessary directions for the setting and publication of the amount.

(3) A regulation under subsection (1) may, for a toll, state—

- (a) the administration charge to be payable under this part; or
- (b) another way that is authorised for the setting and publication of the amount of the administration charge to be payable under this part, including any necessary directions for the setting and publication of the amount.

(4) An administration charge for a toll must not be more than the reasonable cost, under division 3, of issuing a notice and collecting the unpaid toll and administration charge for the toll.

(5) This section does not limit section 490.¹⁰

94 Liability for toll and satisfying the liability

(1) The driver of a designated vehicle entering, or on, a toll road is liable, at each toll plaza through which the vehicle passes, for the toll payable at the toll plaza for the use of the toll road by the vehicle.

(2) The amount of any unpaid toll may be recovered by the toll road operator as a debt from the driver, subject to any applicable agreement made by the toll road operator.

(3) The driver may satisfy the driver's liability for the toll payable at a toll plaza by—

- (a) at a part of the toll plaza designated by appropriate signs as available for making a toll payment in cash, making a payment in cash of the toll payable; or
- (b) at a part of the toll plaza designated by appropriate signs as available for making a toll payment by using a touch tag, paying the toll payable by using a touch tag in accordance with the requirements of the toll road operator; or

10 Section 490 (Regulations)

- (c) at an E toll only pay point at the toll plaza, or at another part of the toll plaza designated by appropriate signs as available for using the E toll system, using the E toll system in accordance with the requirements of section 95(1).

(4) If the designated vehicle is at an E toll only pay point at the toll plaza, the driver may satisfy the driver's liability for the toll only by using the E toll system in accordance with the requirements of section 95(1).

95 Using the E toll system

(1) The following requirements apply for using the E toll system to satisfy a driver's liability under section 94 for the toll payable at a toll plaza—

- (a) a properly operating transponder or other electronic device is in, or fitted to, the designated vehicle;
- (b) the transponder or other device—
- (i) was issued for a vehicle of the same type as the designated vehicle; and
 - (ii) is linked to a valid account for the E toll system operating for the toll road; and
 - (iii) properly activates the E toll system.

(2) To remove doubt, it is declared that using the E toll system to satisfy the liability of a designated vehicle's driver for the toll payable at a toll plaza does not affect another contractual obligation owed by the driver or another person to a toll road operator under an applicable agreement made by the toll road operator.

Example for subsection (2)—

The arrangements for a person's account with a toll road operator may provide that the person will be billed at the end of each month for all the times the transponder issued to the person has been used at toll plazas in the month.

Division 3—Failure to pay toll

96 Application of div 3

This division applies if—

- (a) a designated vehicle passes through a toll plaza; and

- (b) the driver does not, under section 94(3), satisfy the driver's liability for the toll payable at the toll plaza.

97 Definition for div 3

In this division—

“deferred toll amount” means the total of the following amounts—

- (a) the amount of the toll for which the driver's liability was not satisfied under section 94(3);
- (b) the amount of the administration charge for the toll.

98 Liability for administration charge in addition to unpaid toll

If this division applies, the driver immediately becomes liable to pay the toll road operator, in addition to the unpaid toll, the administration charge for the toll.

99 Notice to vehicle's registered operator

(1) The toll road operator may give a notice under this section only if the toll road operator has not received the deferred toll amount.

(2) The toll road operator may give the registered operator of the vehicle a written notice in the approved form requiring the registered operator, within the prescribed time for the notice—

- (a) to pay the toll road operator the deferred toll amount; or
- (b) to give the toll road operator the registered operator's statutory declaration in the approved form containing information that—
 - (i) establishes, to the extent it is reasonably practicable for the registered operator to do so, that the registered operator was not the driver; and
 - (ii) gives the toll road operator all the help the registered operator can reasonably give for establishing the driver's name and address.

(3) The registered operator must comply with the notice given under subsection (2) unless the registered operator has a reasonable excuse.

Maximum penalty—15 penalty units.

(4) For giving the notice under subsection (2), the registered operator's address for service may be taken to be the address recorded for the registered operator under the registration Act applying to the designated vehicle's registration.

100 Notice to information holder

(1) The toll road operator may give a notice under this section only if the toll road operator—

- (a) has not received the deferred toll amount; and
- (b) considers, on reasonable grounds, that a person (the “**information holder**”) other than the vehicle's registered operator has information that could help the toll road operator establish the name and address of the driver.

(2) The toll road operator may give the information holder a written notice in the approved form requiring the information holder, within the prescribed time for the notice, to give the toll road operator a statutory declaration complying with subsection (3).

(3) The statutory declaration must—

- (a) be made by the information holder; and
- (b) be in the approved form; and
- (c) contain information giving the toll road operator all the help the information holder can reasonably give for establishing the driver's name and address.

(4) The information holder must comply with the notice given under subsection (2) unless the information holder has a reasonable excuse.

Maximum penalty for subsection (4)—15 penalty units.

101 Notice to person identified as driver

(1) The toll road operator may give a notice under this section only if the toll road operator—

- (a) has not received the deferred toll amount; and
- (b) considers, on reasonable grounds, that the toll road operator has correctly identified the person (the “**identified person**”) who was the driver.

(2) The toll road operator may give the identified person a written notice in the approved form requiring the identified person, within the prescribed time for the notice—

- (a) to pay the toll road operator the deferred toll amount; or
- (b) to give the toll road operator the identified person's statutory declaration in the approved form containing information that—
 - (i) establishes, to the extent it is reasonably practicable for the identified person to do so, that the identified person was not the driver; and
 - (ii) gives the toll road operator all the help the identified person can reasonably give for establishing the driver's name and address.

(3) The identified person must comply with the notice given under subsection (2) unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—15 penalty units.

102 Statutory declarations for div 3

(1) A statutory declaration given by a person under this division may, if appropriate, be supported by statutory declarations in the approved form from other persons.

(2) If a person required to give a statutory declaration under this division is a body corporate, the statutory declaration must be given by a person authorised to act for the body corporate.

103 Limit on offences

If this division applies more than once because of a failure to pay a toll at each of 2 or more toll plazas on the 1 toll road in a single journey, a person liable for an offence under this division arising out of the journey may not be punished for more than 1 offence.

*Division 4—Miscellaneous***104 Confidentiality**

(1) A person must not, intentionally or recklessly, disclose, allow access to, record or use personal information.

Maximum penalty—200 penalty units.

(2) However, a person may disclose, allow access to, record or use personal information—

- (a) in the discharge of a function related to the administration of this part; or
- (b) if authorised, expressly or impliedly—
 - (i) under another provision of this Act, or under another Act; or
 - (ii) by the individual whose identity is apparent, or can reasonably be ascertained, from the personal information; or
- (c) for a proceeding in a court or tribunal, if the personal information is admissible as evidence in the proceeding; or
- (d) if the purpose for which the action is taken is directly related to the purpose for which the personal information was obtained; or
- (e) if the person believes on reasonable grounds that the action is necessary to prevent or lessen a serious and imminent threat to the life or health of an individual.

(3) In this section—

“administration of this part” includes the operation of a toll road under this part.

“personal information” means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, that—

- (a) has been gained or otherwise brought into existence—
 - (i) through involvement in the administration of this part; or
 - (ii) because of an opportunity provided by involvement in the administration of this part; and
- (b) is about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

105 Evidence and procedure

(1) For this part—

- (a) it is not necessary to prove the appointment of an official; and
- (b) a signature purporting to be the signature of an official is evidence of the signature it purports to be; and
- (c) a certificate stating any of the following matters is evidence of the matter—
 - (i) a stated place was or was not a toll road or part of a toll road;
 - (ii) a stated place was or was not a toll plaza or part of a toll plaza;
 - (iii) a stated person was or was not recorded as the registered operator of a stated vehicle;
 - (iv) a stated vehicle was or was not a designated vehicle of a stated type;
 - (v) the toll payable for a vehicle's use of a toll road has not been paid;
 - (vi) the administration charge for a toll has not been paid;
 - (vii) a statutory declaration required for division 3 was or was not received;
 - (viii) a recording is a recording of a type mentioned in subsection (3).

(2) A certificate—

- (a) may relate to a stated time or period of time; and
- (b) if it is issued for a particular period, has the effect mentioned in subsection (1)(c) for the entire period.

(3) A recording by a photographic, mechanical, electronic or other device for the purpose of administering this part, including for the operation of a toll road under this part, is evidence—

- (a) that the recording was made; and
- (b) of the accuracy of the recording; and
- (c) of the matters stated in the recording.

(4) For this section—

“**certificate**” means a certificate purporting to be signed by an official.

“**official**” means—

- (a) the chief executive, or a suitably qualified officer or employee of the department acting under the authority of the chief executive; or
- (b) the chief executive officer, however named, of a toll road operator, or a suitably qualified employee of the toll road operator acting under the authority of the chief executive officer.

CHAPTER 7—RAIL TRANSPORT INFRASTRUCTURE AND OTHER MATTERS

PART 1—PRELIMINARY

106 Ways of achieving objectives

The objectives of this Act for rail are intended to be achieved by—

- (a) providing for the development and implementation of rail transport infrastructure strategies; and
- (b) providing a framework to—
 - (i) allow railway managers to manage rail transport infrastructure in an effective and efficient way; and
 - (ii) allow railway operators to operate rolling stock in an effective and efficient way; and
- (c) providing for adequate levels of safety by having an accreditation system for railway managers and railway operators.

107 Scope of chapter

(1) This chapter applies to rail transport infrastructure and other rail infrastructure.

(2) This chapter does not apply to—

- (a) a cable car; or

- (b) a monorail; or
- (c) an amusement railway; or
- (d) a railway that—
 - (i) is part of, and used solely for, a mining operation; and
 - (ii) is not connected to a railway used to transport passengers or freight; or
- (e) a cane railway; or
- (f) light rail or light rail transport infrastructure; or
- (g) another railway prescribed under a regulation.

PART 2—INVESTIGATING POTENTIAL RAIL CORRIDOR

108 Purpose of pt 2

The purpose of this part is—

- (a) to facilitate the development of railway infrastructure by giving a person who is genuinely considering constructing a railway authorisation to enter land to enable the land's potential and suitability as a rail corridor to be investigated; and
- (b) to safeguard the interests of owners and occupiers of land affected by the entry.

109 Definitions for pt 2

In this part—

“associated person”, of an investigator, means any of the following—

- (a) if the investigator is a corporation—the corporation's chief executive, secretary or directors;
- (b) the investigator's employees or partners who are individuals;

- (c) a person who is an agent of, or contractor for, the investigator, and engaged in writing for the purposes of the investigator's authority;
- (d) employees of an agent or contractor mentioned in paragraph (c);
- (e) if a person mentioned in paragraph (c) is a corporation—the corporation's chief executive, secretary, directors or employees.

“**authority**” means a rail feasibility investigator's authority.

“**investigator**” means a person who holds an authority.

110 How to apply for a rail feasibility investigator's authority

(1) A person may apply to the chief executive for a rail feasibility investigator's authority for an area of land.

(2) The application must be in writing and state the following information—

- (a) the area of land;
- (b) the purpose for which the authority is sought;
- (c) details of the nature of the activities proposed to be conducted in the area;
- (d) the period for which the authority is sought.

111 Additional information for application

(1) The chief executive may—

- (a) make inquiries to decide the application; and
- (b) require the applicant to give the chief executive additional information to decide the application.

(2) The chief executive may reject the application if the applicant fails, without reasonable excuse, to give the additional information within a stated reasonable time of not less than 28 days.

112 Granting authority

(1) The chief executive may grant or refuse to grant an authority.

(2) The chief executive must grant the authority if the chief executive is satisfied the person is genuinely considering constructing a railway and is acting reasonably and in good faith.

(3) If the chief executive refuses to grant an authority, the chief executive must give the applicant written reasons for the refusal.

(4) In deciding the area for an authority, the chief executive must be satisfied the area is no more extensive than is reasonably necessary.

113 Rail feasibility investigator's authority

(1) An authority must be in writing stating the following—

- (a) the area to which it applies;
- (b) the purpose for which it is granted;
- (c) when it expires;
- (d) any conditions that may be imposed on the authority.

Example of conditions—

Lodging a bond with the chief executive or taking out insurance.

(2) An authority authorises the investigator and associated persons—

- (a) to enter and re-enter any land within the area to which it applies for the purpose of investigating the land's potential and suitability as a rail corridor; and
- (b) to the extent reasonably necessary or convenient for that purpose—
 - (i) to do anything on the land; or
 - (ii) to bring anything onto the land; or
 - (iii) to temporarily leave machinery, equipment or other items on the land.

Examples of things authorised by the authority—

1. To conduct surveys and take soil samples.
2. To clear vegetation, or otherwise disturb the land, to the extent reasonably necessary.
3. To construct temporary access tracks using the land or using materials brought onto the land.

(3) The grant of an authority is not an indication of a commitment or approval by the State, the chief executive or any other person in relation to any proposal, and in particular, does not commit the State to acquiring any land as a rail corridor.

(4) An investigator or associated person must comply with each condition of the investigator's authority, unless the investigator or associated person has a reasonable excuse.

Maximum penalty for subsection (4)—200 penalty units.

114 What investigator must do before land is entered for the first time

(1) Before land is entered for the first time under an investigator's authority, the investigator must give a written notice to the land's owner or occupier.

(2) The notice must state—

- (a) the chief executive has granted to the investigator a rail feasibility investigator's authority for an area that is part of or includes the land; and
- (b) the things the investigator and associated persons of the investigator are authorised to do under the authority; and
- (c) a general outline of the things intended to be done on the land, including the construction of any temporary access track; and
- (d) the approximate period during which the land is to be entered under the authority; and
- (e) the grant of the authority is not an indication of a commitment or approval by the State, the chief executive or any other person in relation to any proposal, and in particular, does not commit the State to acquiring any land as a rail corridor.

(3) The investigator or associated person may enter onto land only if—

- (a) the owner or occupier of the land gives written consent to the entry; or
- (b) at least 7 days have passed since the notice was given.

115 Investigator to issue associated person with identification

(1) Before an investigator allows an associated person to act under the investigator's authority, the investigator must issue the associated person with identification.

Maximum penalty—10 penalty units.

(2) The identification must—

- (a) state the names of the investigator and the person to whom the identification is issued; and
- (b) indicate that, for the purposes of this Act, the person is associated with the holder of a rail feasibility investigator's authority; and
- (c) state the capacity in which the associated person is an associated person; and
- (d) be signed by or for the investigator; and
- (e) be signed by the associated person; and
- (f) state an expiry date.

(3) A person who stops being an associated person of an investigator must return the person's identification issued under subsection (1) to the investigator as soon as practicable, but within 21 days, after the person stops being an associated person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) Subsections (5) and (6) apply if a person who claims to be or appears to be the owner or occupier of land within the area for an authority asks an individual who has entered, is entering or is about to enter land under an authority—

- (a) for identification; or
- (b) about the person's authority to enter the land.

(5) If the request is made of an investigator, the investigator must immediately state the investigator's name and show the person a copy of the investigator's authority.

Maximum penalty—10 penalty units.

(6) If the request is made of an associated person of an investigator, the associated person must immediately state his or her name and show the

other person the identification issued to the associated person under subsection (1).

Maximum penalty for subsection (6)—10 penalty units.

116 Pretending to be an investigator etc.

A person must not pretend—

- (a) to be an investigator; or
- (b) to be an associated person of an investigator.

Maximum penalty—80 penalty units.

117 Investigator to take care in acting under authority

An investigator—

- (a) must take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner or occupier; and
- (b) may do anything necessary or desirable to minimise the damage or inconvenience; and
- (c) is liable to compensate the land's owner or occupier for any loss or damage suffered by the owner or occupier arising out of the entry onto the land, any use made of the land, anything brought onto the land or anything done or left on the land in connection with the investigator's authority.

118 Compensation payable by investigator

(1) An owner or occupier of land may, by written notice given to an investigator—

- (a) claim compensation from the investigator for loss or damage arising out of an entry onto the land, any use made of the land, anything brought onto the land or anything done or left on the land in connection with the investigator's authority; or
- (b) require the investigator to carry out works to rectify the damage within a reasonable time after the investigator has finished investigating the land under the authority; or

- (c) require the investigator to carry out works under paragraph (b) and then claim compensation for any loss or damage not rectified.
- (2) A claim may be made—
- (a) whether or not the act or omission giving rise to the claim was authorised under the authority; and
 - (b) whether or not the investigator prohibited, or took steps to prevent, the loss or damage; and
 - (c) even though the loss or damage was caused or contributed to by an associated person.
- (3) The notice must be given—
- (a) within 1 year after the loss or damage happened; or
 - (b) at a later time allowed by a court.
- (4) The amount of compensation is—
- (a) the amount agreed between the parties; or
 - (b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the amount of compensation claimed.

PART 3—ACCREDITATION

Division 1—Introductory

119 Purposes of pt 3

The purposes of this part include providing for an accreditation system for railway managers and railway operators.

120 Part does not create civil cause of action

- (1) This part does not—
- (a) create a civil cause of action based on a contravention of a provision of this part; or

(b) affect or limit a civil right or remedy that exists apart from this part, whether at common law or otherwise.

(2) Without limiting subsection (1)(b), compliance with this part does not necessarily show that a civil obligation that exists apart from this part has been satisfied or has not been breached.

(3) The inclusion of this section in this part does not affect the interpretation of this Act other than this part.

121 Definitions for pt 3

In this part—

“accepted representations”—

- (a) for a proposed safety direction—see section 143(2); and
- (b) for a show cause notice—see section 157(2).

“approved safety management system” see section 122.

“audit program” see section 150(1).

“certificate of accreditation” see section 126(7).

“disciplinary action”, about an accreditation for a railway or light rail, means 1 or more of the following—

- (a) cancelling the accreditation;
- (b) suspending, for a stated period, the accreditation;
- (c) varying the accreditation except if the variation is made because of an application of the accredited person;
- (d) directing an application to be made to amend an accredited person’s approved safety management system for a railway or the operation of rolling stock on a railway.

“dispute matter” see section 141(1)(b).

“employee”, of an accredited person, means—

- (a) an employee of, or a contractor for, the accredited person; or
- (b) an employee of a contractor mentioned in paragraph (a); or
- (c) an individual who performs work for the accredited person without payment, while the person is performing that work.

Example of paragraph (c)—

An individual does work as a volunteer for an organisation of which the person is a member. The organisation is an accredited person. The volunteer is an employee of the accredited person when the volunteer is performing work for the accredited person.

“imposed condition” means a condition imposed on an accreditation by the chief executive, whether the condition was imposed on the accreditation at the time it was granted or at a later time.

“interim minor amendment”—

- (a) of an approved safety management system for a railway managed by a railway manager, means an amendment of the approved safety management system if the amendment—
 - (i) has not been the subject of an application under section 133; and
 - (ii) does not or will not increase the frequency or consequences of an existing hazard or risk, or allow a new hazard or risk to arise, relating to the management of the railway; or
- (b) of an approved safety management system for the operation of rolling stock on a railway by a railway operator, means an amendment of the approved safety management system if the amendment—
 - (i) has not been the subject of an application under section 133; and
 - (ii) does not or will not increase the frequency or consequences of an existing hazard or risk, or allow a new hazard or risk to arise, relating to the operation of rolling stock on the railway.

“proposed action” see section 156(2)(a).

“railway” includes a railway proposed to be constructed on future railway land.

“regulation condition” see section 129(1).

“representation period” see section 142(2)(c).

“safety direction”—

- (a) for a direction given by the chief executive—see section 144(1); or

- (b) for a direction given by a rail safety officer—see section 146(1) or 147(1).

“**show cause notice**” see section 156(1).

“**show cause period**” see section 156(2)(f).

“**suspend**”, an accreditation, means any of the following, as stated in the suspension, for a period stated in the suspension—

- (a) suspend the entire accreditation;
- (b) suspend that part of the accreditation relating to a particular railway managed by, or a particular operation of rolling stock by, the accredited person;
- (c) suspend that part of the accreditation relating to a particular part of the railway managed by, or a particular part of the operation of rolling stock by, the accredited person.

122 Meaning of “**approved safety management system**”

(1) As mentioned in section 126(2)(b) or (3)(b),¹¹ when the chief executive accredits a person under that section as a railway manager or railway operator for a railway, the chief executive must be satisfied the person has a safety management system that is appropriate.

(2) For the first year of accreditation for a railway managed by a railway manager, or for the operation of rolling stock on a railway by a railway operator, the “**approved safety management system**” in relation to the railway manager or railway operator is the safety management system for the railway mentioned in subsection (1).

(3) For the second year, or a later year, of accreditation for a railway managed by a railway manager, or for the operation of rolling stock on a railway by a railway operator, the “**approved safety management system**” in relation to the railway manager or railway operator is—

- (a) if a proposed safety management system for the year is approved under section 136¹²—the system approved under that section; or
- (b) if a proposed safety management system is not approved under section 136 for the year—the approved safety management system that was in force for the last preceding year of

¹¹ Section 126 (Granting accreditation)

¹² Section 136 (Approval of proposed safety management system)

accreditation for which there was an approved safety management system, whether that system was—

- (i) the system mentioned in subsection (1); or
- (ii) a system approved under section 136.

(4) An approved safety management system in force under subsection (2) or (3) is subject to an amendment of the system approved under section 133.¹³

Division 2—Accreditation of railway managers and railway operators

123 Accreditation of managers and operators

(1) A person must not manage a railway unless the person is accredited as the railway manager for the railway.

Maximum penalty—500 penalty units.

(2) A person must not operate rolling stock on a railway unless the person is accredited as a railway operator for the railway.

Maximum penalty—500 penalty units.

(3) Subsection (1) does not apply to a person who—

- (a) owns or manages a railway for a purpose that is incidental to the person's main business; and
- (b) has an agreement with a person who is accredited as the railway manager for another railway for the connection of the railway to the other railway; and
- (c) maintains the railway, or arranges for it to be maintained, in a way that is acceptable to the other person.

124 Applications for accreditation

A person may apply, in the approved form, to the chief executive for accreditation as—

- (a) the railway manager for a railway; or

13 Section 133 (Amendment of approved safety management system)

- (b) a railway operator for a railway; or
- (c) the railway manager and a railway operator for a railway.

125 Additional information for applications

(1) The chief executive may, by written notice, require an applicant to give the chief executive stated written information that the chief executive reasonably requires to consider the application.

(2) The chief executive may reject the application if the applicant fails to comply with the requirement within a stated reasonable time, of not less than 28 days, without reasonable excuse.

126 Granting accreditation

(1) The chief executive must promptly consider an application for accreditation and grant, or refuse to grant, the accreditation.

(2) The chief executive must accredit an applicant as the railway manager for a railway if satisfied—

- (a) the applicant—
 - (i) is accredited in another State to manage a similar type of railway; or
 - (ii) has the competency and capacity to manage the railway safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway; and
- (d) the applicant has a right—
 - (i) of access to the land where the railway is constructed, or proposed to be constructed, either under this Act or with the agreement of the land's owner; and
 - (ii) to use rail transport infrastructure or other rail infrastructure for the railway with the agreement of the infrastructure's owner.

(3) The chief executive must accredit an applicant as a railway operator for a railway if satisfied—

- (a) the applicant—
 - (i) is accredited in another State to operate rolling stock on a railway for a similar type of service; or
 - (ii) has the competency and capacity to operate rolling stock on the railway safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway; and
- (d) unless the applicant is applying for accreditation as the railway manager and operator of a railway—the applicant has an agreement with the railway’s manager to operate particular rolling stock on the railway, and the agreement includes appropriate arrangements for the safe operation of the rolling stock.

(4) In considering a safety management system, the chief executive must consider—

- (a) the applicant’s rail transport proposal; and
- (b) the appropriateness of the safety management system for the proposal; and
- (c) the safety levels achievable, consistent with the nature of the proposal, at a reasonable cost; and
- (d) the need for efficient and competitive rail transport services; and
- (e) consistency with generally accepted risk management principles; and
- (f) the levels of safety proposed relative to the levels of safety of competing transport modes.

(5) Subsection (4) does not limit by implication the matters the chief executive may consider in considering a safety management system.

(6) If the chief executive decides to grant the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the details of the accreditation, including its scope; and

- (c) if the accreditation is granted subject to a condition of the type mentioned in section 128—
 - (i) the details of the condition; and
 - (ii) the reason for the condition.

(7) Also, the chief executive must give to the applicant a certificate about the accreditation (a “**certificate of accreditation**”).

(8) If the chief executive decides not to grant the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision.

(9) Written notice of a decision given under subsection (6) or (8) must be accompanied by an information notice for the decision.

127 Annual levy

(1) A regulation may impose levies on railway managers relating to their accreditation on a basis prescribed under the regulation.

(2) A regulation may impose levies on railway operators relating to their accreditation on a basis prescribed under the regulation.

(3) The chief executive must give each accredited person a signed notice stating—

- (a) the amount of the levy payable by the accredited person; and
- (b) a reasonable date by which the levy is to be paid to the chief executive.

(4) An accredited person given a notice under subsection (3) must pay the amount of the levy by the date stated in the notice.

(5) If the accredited person does not pay the amount of the levy by the date stated in the notice, the amount is a debt owed to the chief executive.

128 Accreditation conditions

(1) An accreditation may be subject to imposed conditions or regulation conditions.

(2) The chief executive may impose reasonable conditions on an accreditation that the chief executive considers appropriate, including matters relating to—

- (a) for the accreditation of a person as the manager of a railway—
 - (i) constructing or maintaining the railway; or
 - (ii) managing the railway safely, considering the need for efficient and competitive services; or
- (b) for the accreditation of a person as an operator of a railway—
 - (i) operating rolling stock safely, considering the need for efficient and competitive services; or
 - (ii) the person having an agreement with the manager of the railway to operate particular rolling stock on the railway, and the agreement, including appropriate arrangements for the safe operation of rolling stock; or
- (c) for all accreditations—
 - (i) the approved safety management system for the railway or the operation of rolling stock on the railway with which the accredited person must comply; or
 - (ii) another matter prescribed under a regulation.

(3) An accredited person must comply with each imposed condition on the person's accreditation.

Maximum penalty for subsection (3)—200 penalty units.

129 Regulation may prescribe a condition applying to an accreditation

(1) A regulation may prescribe—

- (a) a condition (a “**regulation condition**”) to which an accreditation of an accredited person is subject; and
- (b) a penalty for contravening the regulation condition.

(2) If there is an inconsistency between an imposed condition and a regulation condition, the regulation condition applies to the extent of the inconsistency.

(3) For the application of a regulation condition to an accreditation of an accredited person, it is irrelevant when the accreditation of the accredited person was granted.

130 Surrender of accreditation

(1) An accredited person may surrender the person's accreditation by signed notice given to the chief executive.

(2) The accredited person must return to the chief executive the certificate of accreditation within 14 days after the surrender of the accreditation, unless the accredited person has a reasonable excuse.

Maximum penalty for subsection (2)—20 penalty units.

131 Accreditation period

An accreditation remains in force until it is suspended, cancelled or surrendered.

132 Amendment of imposed conditions

(1) An accredited person may apply to the chief executive for an amendment of the conditions imposed on the person's accreditation.

(2) The chief executive must consider the application and may grant, or refuse to grant, the amendment.

(3) The chief executive may amend a condition only if satisfied the condition is—

(a) no longer appropriate; or

(b) no longer consistent with generally accepted risk management principles.

(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.

(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—

(a) the decision; and

(b) the reason for the decision.

(6) The written notice must be accompanied by an information notice for the decision.

(7) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the accredited person at the end of the 70 days.

(8) Despite subsection (1), an application for an amendment of an approved safety management system for a railway managed by an accredited person, or for the operation of rolling stock on a railway by an accredited person, must be made under section 133.

133 Amendment of approved safety management system

(1) An accredited person may apply to the chief executive for approval of a proposed amendment of the approved safety management system for either of the following—

- (a) a railway managed by the accredited person;
- (b) the operation of rolling stock on a railway by the accredited person.

(2) The chief executive must consider the application and may approve, or refuse to approve, the proposed amendment.

(3) The chief executive may approve the proposed amendment only if reasonably satisfied the approved safety management system, as it will be amended, is consistent with generally accepted risk management principles.

(4) If the chief executive decides to approve the proposed amendment, the chief executive must give the applicant a signed notice stating the decision and the approved amendment.

(5) The approved amendment is taken to be incorporated into the approved safety management system for the railway, or for the operation of rolling stock on the railway, on the day stated in the signed notice.

(6) If the chief executive decides to refuse to approve the proposed amendment, the chief executive must give the applicant—

- (a) a signed notice stating the decision and the reason for the decision; and
- (b) an information notice for the decision.

(7) Nothing in this section requires an accredited person to apply to the chief executive for approval of an interim minor amendment of the approved safety management system for—

- (a) a railway managed by the accredited person; or
- (b) the operation of rolling stock on a railway by the accredited person.¹⁴

Division 3—Obligations of accredited persons

134 Accredited person must comply with approved safety management system

(1) An accredited person must, unless the person has a reasonable excuse, comply with—

- (a) the approved safety management system for the railway managed by the accredited person; or
- (b) the approved safety management system for the operation of rolling stock by the accredited person on a railway.

Maximum penalty—200 penalty units.

(2) It is a reasonable excuse if the accredited person complied with—

- (a) the approved safety management system amended by an interim minor amendment; or
- (b) the approved safety management system to the extent that was practicable while complying with a safety direction given to the accredited person.

(3) Subsection (2) does not limit the excuses that may be reasonable excuses.

135 Accredited person to review approved safety management system each year and related matters

(1) Before each anniversary of the accreditation of an accredited person for a railway that is managed by the accredited person, or for the operation of rolling stock on a railway by the accredited person, the accredited person must—

- (a) review the appropriateness of the approved safety management system for the railway or for the operation of rolling stock; and

¹⁴ See sections 134(2) and 135(2)(b) for provisions about interim minor amendments.

- (b) consider any safety directions given since the last approval; and
- (c) consider whether an amendment is required to the system.

(2) At least 28 days before the anniversary, the accredited person must give to the chief executive—

- (a) a signed notice, in the approved form, stating how the accredited person complied with subsection (1); and
- (b) if there is a difference between the approved safety management system for the railway, or for the operation of rolling stock on the railway, for the current year of accreditation and the proposed safety management system for the following year, including, for example, interim minor amendments—
 - (i) a copy of the proposed system; and
 - (ii) a statement identifying the differences; and
 - (iii) an application under section 136 for approval of the proposed system.

Maximum penalty for subsection (2)—100 penalty units.

136 Approval of proposed safety management system

(1) This section applies if—

- (a) an accredited person for a railway has reviewed and considered matters as mentioned in section 135(1); and
- (b) the person must give to the chief executive an application, as mentioned in section 135(2)(b)(iii), for the approval of a proposed safety management system for the railway or for the operation of rolling stock on a railway; and
- (c) the person has given the application to the chief executive.

(2) The chief executive must consider the application and may approve, or refuse to approve, the proposed system.

(3) The chief executive may approve the proposed system only if reasonably satisfied the proposed system is consistent with generally accepted risk management principles.

(4) If the chief executive decides to approve the proposed system, the chief executive must give the applicant a signed notice stating the decision.

(5) If the chief executive decides to refuse to approve the proposed system, the chief executive must give the applicant—

- (a) a signed notice stating the decision and the reason for the decision; and
- (b) an information notice for the decision.

137 Financial capacity or insurance arrangements to meet potential accident liabilities

(1) A railway manager must have the financial capacity, or public risk insurance arrangements, at all times to meet reasonable potential accident liabilities relating to the railway managed by the railway manager.

Maximum penalty—400 penalty units.

(2) A railway operator must have the financial capacity, or public risk insurance arrangements, at all times to meet reasonable potential accident liabilities relating to the rolling stock operated on a railway by the railway operator.

Maximum penalty—400 penalty units.

(3) The chief executive may, by signed notice given to an accredited person, require the accredited person to satisfy the chief executive that the person has the financial capacity or public risk insurance arrangements as mentioned in subsection (1) or (2).

(4) An accredited person given a notice under subsection (3) must comply with the notice within 14 days after the notice is given to the accredited person.

Maximum penalty—40 penalty units.

(5) The chief executive may, under section 158,¹⁵ suspend an accreditation whether or not—

- (a) the chief executive has given the accredited person a notice under subsection (3); or
- (b) the period to comply with a notice under that subsection has ended.

15 Section 158 (Immediate suspension of an accreditation)

138 Notice of cancellation etc. of agreement mentioned in s 126(3)(d)

(1) This section applies to an agreement mentioned in section 126(3)(d).¹⁶

(2) If the agreement is cancelled or suspended, each party to the agreement must give the chief executive a signed notice about the cancellation or suspension within 14 days after the cancellation or suspension.

Maximum penalty—200 penalty units.

***Division 4—Disputes about or under agreements for access to rail
transport infrastructure that relate to rail safety***

139 Chief executive may decide matters on request

(1) This section applies if parties to negotiations for a proposed agreement about access to rail transport infrastructure are unable to agree about a safety matter.

(2) The chief executive may make a decision about the safety matter if—

- (a) the access is required to be given under an access undertaking and, under that undertaking, the QCA asks the chief executive to make a decision about the safety matter; or
- (b) there is no access undertaking but access is required to be given under the *Queensland Competition Authority Act 1997* and the QCA asks the chief executive to make a decision about the safety matter; or
- (c) the access is not required under an access undertaking or the *Queensland Competition Authority Act 1997*, but at least 1 of the parties to the negotiations asks the chief executive to make a decision about the safety matter and the chief executive reasonably considers it appropriate to make a decision.

(3) If a decision is made under subsection (2)(a) about a safety matter and the QCA is dealing with matters under the access undertaking that include the safety matter, the QCA must not make a decision relating to the safety matter that is inconsistent with the chief executive's decision about the safety matter.

16 Section 126 (Granting accreditation)

(4) If a decision is made under subsection (2)(b) and the QCA must exercise a power under the *Queensland Competition Authority Act 1997* relating to the safety matter, the QCA must have regard to the chief executive's decision in exercising the power.

(5) If a decision is made under subsection (2)(c), the decision is binding on the parties to the negotiations only if the parties agreed to be bound by the decision.

(6) The chief executive may develop guidelines for making decisions under subsection (2).

(7) The chief executive must make any current guidelines mentioned in subsection (6) publicly available.

(8) In this section—

“**access undertaking**” see the *Queensland Competition Authority Act 1997*, the schedule.

“**QCA**” means the Queensland Competition Authority.

“**safety matter**” means a matter about rail safety.

140 Notice of dispute under agreement for access

(1) This section applies to a dispute under an agreement for accessing rail transport infrastructure if the dispute is about a matter relating to rail safety, including, for example, the following agreements—

- (a) an agreement mentioned in section 261(1);¹⁷
- (b) an access agreement.

(2) A person who gives notice of the dispute to another party to the agreement may give the chief executive a signed notice stating details of the dispute.

(3) Each accredited person who is a party to the agreement must give the chief executive a signed notice stating details of the resolution of the dispute within 14 days after the resolution.

Maximum penalty—10 penalty units.

(4) In this section—

¹⁷ Section 261 (Non-accredited railways)

“**access agreement**” see the *Queensland Competition Authority Act 1997*, the schedule.

“**resolution**”, of a dispute, means the end of the dispute by—

- (a) agreement of the parties to the dispute; or
- (b) arbitration; or
- (c) a decision of an expert under the agreement; or
- (d) a decision of a court or the Queensland Competition Authority.

141 Helping in a dispute under agreement for access

(1) This section applies if the chief executive—

- (a) is given a notice under section 140(2); and
- (b) reasonably considers that it may be appropriate to give a safety direction about the matter stated in the notice as in dispute (the “**dispute matter**”).

(2) The chief executive must inform himself or herself about the dispute matter in any way the chief executive consider appropriate.

(3) Without limiting subsection (2), the chief executive may consult with 1 or more of the following persons about the dispute matter—

- (a) each accredited person who is a party to the agreement;
- (b) another person whom the chief executive reasonably believes may be able to help the chief executive in relation to the dispute matter, including, for example, the Queensland Competition Authority.

(4) For consulting with an accredited person, the chief executive may give a signed notice to the accredited person stating a reasonable time and place for a meeting with the accredited person.

(5) An accredited person given a notice under subsection (4) must attend the meeting at the time and place stated in the notice.

Maximum penalty for subsection (5)—10 penalty units.

142 Notice of proposed safety direction

(1) If the chief executive reasonably considers himself or herself informed about a dispute matter and that it is reasonable to make a safety

direction about the matter, the chief executive must give each party to the agreement, and the Queensland Competition Authority, the proposed safety direction to be given to an accredited person.

(2) The proposed safety direction must include—

- (a) the grounds for the proposed safety direction; and
- (b) an outline of the facts and circumstances forming the basis for the grounds; and
- (c) an invitation to each person given the proposed safety direction to show, within a stated period (the “**representation period**”), why the proposed safety direction should not be given to an accredited person.

(3) The representation period must be a period ending at least 14 days after the day that the proposed safety direction is given to the parties to the agreement.

143 Consideration of representations

(1) Each person given a proposed safety direction under section 142(1) may make written representations about the proposed safety direction to the chief executive in the representation period.

(2) The chief executive must consider all written representations (the “**accepted representations**”) made under subsection (1).

144 Chief executive’s actions after stated period

(1) After considering any accepted representations, the chief executive may give a direction (a “**safety direction**”) to 1 or more accredited persons to do or not to do an act stated in the safety direction.

(2) The safety direction must include—

- (a) the reason for the safety direction; and
- (b) the day by which the safety direction must be complied with, that must be reasonable having regard to the nature of the matters to be done under the safety direction.

(3) A directed person must comply with the safety direction, unless the directed person has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) The safety direction must be accompanied by an information notice about the chief executive's decision to give the safety direction.

(5) Also, the chief executive must give to a dispute party a signed notice about the fact that a safety direction has been given to the directed person.

(6) In this section—

“directed person” means a person given a safety direction under subsection (1).

“dispute party” means a person given a proposed safety direction as mentioned in section 142(1) who is not a directed person.

Division 5—Safety directions by rail safety officers

145 Application of division

This division applies if a rail safety officer reasonably believes, for either or both of the following reasons, it is necessary to give an accredited person, or a person who appears to the officer to be an employee of an accredited person, a safety direction—

- (a) to maintain an adequate level of safety in managing a railway or the operation of rolling stock on a railway;
- (b) to prevent a situation the rail safety officer reasonably considers to be unsafe.

146 Written direction by rail safety officer

(1) The rail safety officer may, by a written direction given to the accredited person or the employee (a **“safety direction”**), direct the accredited person or employee to do or not to do an act stated in the safety direction.

(2) The safety direction must state a date or, if applicable, a time on the day by which the safety direction must be complied with, that must be reasonable having regard to the nature of the matters to be done under the safety direction.

(3) A person to whom a safety direction is given under subsection (1) must comply with it, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—150 penalty units.

147 Spoken direction because written direction is not possible or reasonable

(1) If it is not possible or reasonable for the rail safety officer to give a safety direction in writing to the accredited person or the employee as mentioned in section 146(1), the officer may direct the accredited person or employee (also a “**safety direction**”) to do or not to do a stated act by telling the accredited person or employee—

- (a) to do or not to do the stated act; and
- (b) the reason for the officer giving the safety direction.

(2) A person to whom a safety direction is given under subsection (1) must comply with it, unless the person has a reasonable excuse.

Maximum penalty—150 penalty units.

(3) It is a reasonable excuse if the officer did not tell the person that the person commits an offence if the person does not comply with the safety direction.

(4) Within 5 days after giving a person a safety direction under subsection (1), the rail safety officer must give the accredited person or employee a written notice stating the safety direction given under that subsection.

148 Direction under s 146(1) or 147(4) must include reasons and be accompanied by information notice

(1) This section applies to a rail safety officer when giving a safety direction under section 146(1) or a written notice stating a safety direction under section 147(4).

(2) The safety direction or notice must—

- (a) include the reasons for the safety direction; and
- (b) be accompanied by an information notice for the safety direction.

(3) If it is not possible or reasonable for a rail safety officer to comply with subsection (2) at the time the officer is giving the safety direction, the officer must comply with the subsection as soon as is reasonably practicable for the officer to do so.

149 Safety directions and relationship with Workplace Health and Safety Act 1995

(1) It is a defence in a proceeding against a person for a safety direction contravention for the person to prove—

- (a) the person committed the act or omission constituting the safety direction contravention as part of complying with the person’s workplace obligations; and
- (b) in committing the act or omission constituting the safety direction contravention, the person did each of the following to diminish the consequences of the safety direction contravention—
 - (i) chose an appropriate way;
 - (ii) took reasonable care and skill;
 - (iii) exercised proper diligence.

(2) In this section—

“**safety direction contravention**” means a contravention of an obligation imposed on the person under a safety direction.

“**workplace obligations**”, of a person, means the person’s obligations under the *Workplace Health and Safety Act 1995*, section 26 and part 3, divisions 2 and 3.¹⁸

*Division 6—Audit regime***150 Audit program for inspecting activities of accredited person**

(1) For each year, the chief executive must prepare a program (an “**audit program**”) for inspecting the activities of railway managers and railway operators during the year.

(2) Without limiting subsection (1), an audit program may focus on the following—

- (a) particular railway managers or railway operators;

¹⁸ *Workplace Health and Safety Act 1995*, section 26 (How obligations can be discharged if regulation etc. made) and part 3 (Workplace health and safety obligations), divisions 2 (Obligations of employers and others) and 3 (Obligations of workers and other persons)

- (b) a particular criterion relating to railway managers or railway operators;
- (c) a particular aspect of safety.

151 When inspections may be carried out during a year

(1) During a year, the chief executive may inspect an accredited person under an audit program for the year.

(2) Also, the chief executive may inspect an accredited person if the chief executive reasonably believes—

- (a) an aspect of safety needs to be considered in relation to the particular accredited person or accredited persons generally; or
- (b) the accredited person has not, or is not, complying with a railway provision.

152 Requirement to give information or document for inspection

(1) For inspecting an accredited person, the chief executive may, by signed notice given to the accredited person, require the accredited person to give the chief executive information or a document the chief executive reasonably believes is relevant to the inspection.

(2) The notice must include—

- (a) a time, that is reasonable in the circumstances, by which the accredited person must comply with the requirement; and
- (b) a warning that it is an offence to fail to comply with the requirement, unless the accredited person has a reasonable excuse.

153 Failure to give information or document for inspection

(1) A person to whom a notice is given under section 152 must comply with the requirement in the notice within the time stated in it, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(2) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.

(3) The person does not commit an offence against this section if the information or document sought by the chief executive is not in fact relevant to the inspection.

Division 7—Disciplinary action against accredited persons

154 Happening that may give rise to a belief that a ground for disciplinary action exists

(1) The chief executive may consider that a ground for disciplinary action about an accreditation of an accredited person exists after any of the following—

- (a) an inspection under an audit program;
- (b) an inspection other than under an audit program;
- (c) a report of a serious incident;
- (d) an investigation of an incident.

(2) However, subsection (1) does not limit the matters that may cause the chief executive to consider a ground for disciplinary action exists.

155 Grounds for disciplinary action about the accreditation of an accredited person

Each of the following is a ground to take disciplinary action about an accreditation of an accredited person—

- (a) the accredited person contravened a provision of this part, part 5 or 6 or chapter 14,¹⁹ whether or not—
 - (i) a penalty is provided for the provision that the accredited person contravened; or
 - (ii) a proceeding for a railway offence, or another action under this Act relating to a railway provision, is started against the person; or
 - (iii) the person is convicted of a railway offence, or another action is taken in relation to the person under this Act;

19 Parts 3 (Accreditation), 5 (Rail safety officers) or 6 (Railway incidents) or chapter 14 (Transporting dangerous goods by rail)

- (b) the accredited person failed to comply with a condition of the accreditation.

156 Show cause notice

(1) If the chief executive reasonably believes a ground exists to take disciplinary action about an accreditation of an accredited person, the chief executive must give the accredited person a signed notice (a “**show cause notice**”).

(2) The show cause notice must state each of the following—

- (a) the disciplinary action the chief executive proposes taking under this division (the “**proposed action**”);
- (b) the grounds for the proposed action;
- (c) an outline of the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action includes suspension—the proposed suspension including the proposed period of the suspension;
- (e) if the proposed action includes varying the accreditation—the change that it is proposed to make to an imposed condition or a new condition it is proposed to impose on the accreditation;
- (f) an invitation to the accredited person to show, within a stated period (the “**show cause period**”), why the proposed action should not be taken.

(3) The show cause period must be a period ending at least 28 days after the day the show cause notice is given to the accredited person.

157 Consideration of representations

(1) The accredited person may make written representations about the show cause notice to the chief executive in the show cause period.

(2) The chief executive must consider all written representations (the “**accepted representations**”) made under subsection (1).

158 Immediate suspension of an accreditation

(1) This section applies if the chief executive reasonably believes—

- (a) a ground to take disciplinary action about an accreditation requires the immediate suspension of the accreditation—
 - (i) to ensure the safety of persons; or
 - (ii) to prevent damage to rail transport infrastructure or other rail infrastructure; or
- (b) an accredited person does not have the financial capacity or public risk insurance arrangements required under section 137(1) or (2).²⁰

(2) The chief executive may suspend the accreditation immediately.

(3) The suspension can be effected only by the chief executive giving the accredited person all of the following—

- (a) a signed notice stating the suspension and the reason for the suspension;
- (b) an information notice for the suspension;
- (c) a show cause notice.

(4) The suspension—

- (a) takes effect immediately all the documents mentioned in subsection (3) are given to the accredited person; and
- (b) continues to operate until the show cause notice is finally dealt with.

159 Action by chief executive

(1) This section applies if—

- (a) there are no accepted representations for the show cause notice; or
- (b) after considering the accepted representations for the show cause notice, the chief executive still believes the ground for disciplinary action exists relating to the accreditation.

(2) The chief executive may—

²⁰ Section 137 (Financial capacity or insurance arrangements to meet potential accident liabilities)

- (a) if the proposed action is a direction to apply to amend the approved safety management system for a railway managed, or for the operation of rolling stock on a railway, by the accredited person—direct the accredited person to apply for the proposed amendment by a stated time; or
- (b) if the proposed action is to suspend the accreditation—suspend the accreditation for not longer than the proposed period of suspension; or
- (c) if the proposed action is to vary the accreditation—vary the accreditation in the proposed way, or another way to which the accredited person has consented in writing, including by varying an existing condition or by imposing a new condition; or
- (d) if the proposed action is to cancel the accreditation—cancel the accreditation or suspend the accreditation for a period.

(3) More than 1 type of disciplinary action about an accreditation of an accredited person may be taken under this section.

(4) If the chief executive decides to take action under subsection (2), the chief executive must immediately give the accredited person—

- (a) a signed notice stating—
 - (i) the decision; and
 - (ii) for a direction as mentioned in subsection (2)(a)—that the accreditation will be suspended in its entirety under subsection (5) without further notice until the accredited person makes the application for the proposed amendment; and
 - (iii) the reasons for the decision; and
- (b) an information notice for the decision.

(5) If the chief executive directs the accredited person to apply for a proposed amendment by a stated time and the person does not make the application by the stated time, the accredited person's accreditation is suspended in its entirety from that time until the day after the day the accredited person gives the chief executive the application.

(6) If the chief executive's decision is to cancel the accreditation, the notice mentioned in subsection (4)(a) must include a direction to the accredited person to return the certificate of accreditation to the chief executive, within 14 days after receiving the notice.

(7) A person who is directed under subsection (6) to return a certificate of accreditation must comply with the direction within 14 days after receiving the direction.

Maximum penalty—40 penalty units.

(8) The decision takes effect on the later of the following—

- (a) the day the signed notice mentioned in subsection (4)(a) is given to the accredited person;
- (b) the day of effect stated in the signed notice.

160 Decision by chief executive not to take action under s 159

(1) This section applies if—

- (a) there are accepted representations for the show cause notice; and
- (b) after considering the accepted representations for the show cause notice, the chief executive no longer believes a ground for disciplinary action exists relating to the accreditation.

(2) The chief executive must give the accredited person a signed notice stating the chief executive does not intend to take action under section 159 and the matter is completed.

Division 8—Information about safety issues

161 Chief executive may publish safety bulletin

(1) The chief executive may publish, in a way that the chief executive considers appropriate, a document containing information about safety issues for railways (a “**safety bulletin**”).

(2) Without limiting the information that may be included in a safety bulletin, the chief executive may include any of the following information—

- (a) information arising out of a report of an incident or an investigation into an incident, including a serious incident;
- (b) information arising out of an inspection of an accredited person;
- (c) other information about safety issues, including information from outside Queensland.

(3) The chief executive must consult with an accredited person about information the chief executive proposes to publish that may identify, or be reasonably expected to identify, the accredited person.

(4) Also, the chief executive must consult with an accredited person, or any other person, about information the chief executive proposes to publish in which the accredited person or the other person has a proprietary interest.

PART 4—RAIL TRANSPORT INFRASTRUCTURE POWERS

Division 1—Railway works

162 Application of div 1

This division applies only to railway works.

163 Entering land for railway works etc.

For railway works, the chief executive or an accredited person may enter someone else's land and carry out the works.

164 Entry to land by notice or with approval

(1) Before entering someone else's land to carry out railway works, the chief executive or an accredited person must—

- (a) give at least 7 days written notice to the land's owner or occupier;
or
- (b) get the written agreement of the land's owner or occupier to the entry.

(2) The notice must—

- (a) state the use intended to be made of the land; and
- (b) include a general outline of the intended works; and

- (c) state an approximate period when the works are expected to be carried out on the land.

(3) The chief executive or accredited person need not comply with subsection (1) for—

- (a) urgent remedial action on a railway; or
- (b) maintenance on a road.

(4) If urgent remedial action is required, the chief executive or accredited person must give the land's owner or occupier as much oral notice as is practicable.

165 Care to be taken in carrying out works etc.

In entering land and carrying out railway works on the land, the chief executive or an accredited person—

- (a) must take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner or occupier; and
- (b) may do anything necessary or desirable to minimise the damage or inconvenience; and
- (c) must get the agreement of the owner or occupier to take or use the materials of the land's owner or occupier, unless urgent remedial action on a railway is required.

166 Compensation for carrying out works etc.

(1) An owner or occupier of land entered under this part by the chief executive or an accredited person may, by written notice given to the chief executive or accredited person—

- (a) claim compensation for loss or damage caused by the entry or railway works carried out on the land; or
- (b) claim compensation for the taking or use of materials; or
- (c) require the person to carry out works in restitution for the damage; or
- (d) require the person to carry out works in restitution for the damage and then claim compensation for any loss or damage not restituted.

(2) The notice must be given—

- (a) within 1 year after the railway works are completed; or
- (b) at a later time allowed by the chief executive or accredited person.

(3) The amount of compensation is—

- (a) the amount agreed between the parties; or
- (b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

(4) However, the amount of compensation for damage to the land and its fixtures, and for taking or use of materials, can not be more than the amount that would have been awarded if the land had been acquired.

167 Watercourses

(1) To carry out railway works, an accredited person may, with the chief executive's written approval—

- (a) divert a watercourse; or
- (b) construct a watercourse, whether temporary or permanent.

(2) In deciding whether to approve the diversion of a watercourse, the chief executive must consider the effect the works would have on the watercourse's physical integrity and flow characteristics.

(3) Subsection (2) does not limit the matters the chief executive may consider.

Division 2—Other powers

168 Power to require works to stop

(1) A person must not, without the chief executive's written approval, carry out works near a railway if the works threaten, or are likely to threaten, the railway's safety or operational integrity.

Maximum penalty—100 penalty units.

(2) If—

- (a) a person is carrying out, or proposes to carry out, works near a railway; and

- (b) the chief executive reasonably believes they threaten, or are likely to threaten, the railway's safety or operational integrity;

the chief executive may give the person a written direction to stop, alter or not to start the works.

(3) The person must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) If works are carried out contrary to subsection (1) or a direction under subsection (2), the chief executive may, by written notice, require the owner of the land where the works are situated to alter, demolish or take away the works within a stated reasonable time.

(5) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(6) If the person does not comply with the requirement, the chief executive may—

- (a) alter, demolish or take away the works; or
- (b) alter, demolish or take away the works and recover the cost of doing so from the land's owner as a debt payable by the owner.

(7) For this section, a person authorised by the chief executive may enter land and inspect works—

- (a) after giving 3 days written notice to the land's owner or occupier; or
- (b) with the written agreement of the land's owner or occupier; or
- (c) without notice or approval, if the chief executive reasonably believes there is an immediate and significant threat to the railway's safety or operational integrity.

(8) This section binds all persons, including the State, the Commonwealth and the other States.

169 Closing railway crossings

(1) A railway manager may temporarily close or regulate a railway crossing if satisfied it is necessary because of an immediate threat to—

- (a) the safety of the railway; or

- (b) the public using it or who may use it.
- (2) If the manager decides to close or regulate a crossing—
- (a) the manager must, as soon as practicable after its closure or regulation, notify the authority responsible for the crossing of its closure or regulation, unless the authority has agreed that notification is unnecessary; and
 - (b) the manager may construct a substitute crossing.

PART 5—RAIL SAFETY OFFICERS

Division 1—Definitions

170 Definitions for pt 5

In this part—

“enter”, rolling stock, includes board rolling stock.

“place” includes the following—

- (a) land;
- (b) a building or other structure, or part of a building or other structure, of any type;
- (c) a group of buildings or other structures, or part of a group of buildings or other structures, of any type.

“public place” means—

- (a) a place, or part of a place, that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or
- (b) a place, or part of a place, that the occupier allows members of the public to enter, whether or not on payment of money.

“railway workplace” means either of the following places —

- (a) a place that is, or at which is located, rail transport infrastructure or other rail infrastructure;

- (b) another place used by an accredited person to conduct activities in relation to managing a railway or operating rolling stock on a railway.

Division 2—Rail safety officers including provisions about appointment

171 Rail safety officers

- (1) Each police officer is a rail safety officer.
- (2) The chief executive may appoint an officer of the department, or any other person, as a rail safety officer.
- (3) However, the chief executive may appoint a person under subsection (2) only if the chief executive is reasonably satisfied the person is qualified for appointment because the person has the necessary expertise or experience.
- (4) Sections 172(1)(a) and (b), 173 and 174 do not apply to a rail safety officer who is a police officer.

172 Appointment conditions and limit on powers

- (1) A rail safety officer holds office on any conditions stated in—
 - (a) the officer’s instrument of appointment; or
 - (b) a signed notice by the chief executive given to the officer; or
 - (c) a regulation.

Example for subsection (1)(a)—

The instrument of appointment of a rail safety officer may provide that if the officer is an employee of a railway manager or railway operator for a railway, the officer is appointed only to investigate, or may not investigate, a matter under section 216(2) about a specific railway.

- (2) The instrument of appointment, a signed notice given to the officer or a regulation may limit the officer’s powers under a railway provision.

173 Issue of identity card to each rail safety officer

- (1) The chief executive must issue an identity card to each rail safety officer.

(2) The identity card must—

- (a) contain a recent photo of the officer; and
- (b) contain a copy of the officer's signature; and
- (c) identify the person as a rail safety officer under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the issuing of a single identity card to a person for this Act and other purposes.

174 Production or display of identity card

(1) In exercising a power under a railway provision in relation to a person, a rail safety officer must—

- (a) produce the officer's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so that it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), a rail safety officer does not exercise a power in relation to a person only because the officer, as authorised under this Act, enters—

- (a) a public place when it is open to the public; or
- (b) a place for the purpose of asking the occupier of the place for consent to enter.

175 When rail safety officer ceases to hold office

(1) A rail safety officer ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) the officer ceases to hold office under another condition of office;
- (c) the officer's resignation under section 176 takes effect.

(2) Subsection (1) does not limit the ways a rail safety officer may cease to hold office.

(3) In this section—

“**condition of office**” means a condition on which the officer holds office.

176 Resignation

A rail safety officer may resign by signed notice given to the chief executive.

177 Return of identity card

A person who ceases to be a rail safety officer must return the person’s identity card to the chief executive within 21 days after ceasing to be an officer, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

Division 3—Entry to places by rail safety officers

178 Power to enter places

(1) A rail safety officer may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is a railway workplace and the entry is made when the place is—
 - (i) open for carrying on activities for which the place is a railway workplace; or
 - (ii) otherwise open for entry; or
 - (iii) required to be open for inspection under an accreditation; or
 - (iv) not open, or required to be open, as mentioned in subparagraphs (i) to (iii) but the entry is urgently required to investigate the circumstances of a serious incident.

(2) For the purpose of asking the occupier of a place for consent to enter, the officer may, without the occupier’s consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) A rail safety officer who enters a railway workplace under subsection (1)(d) must not unnecessarily impede any activities being conducted at the workplace.

(4) If a rail safety officer may enter a place under subsection (1)(d), the officer is not authorised to enter any part of the place that is a home.

(5) In this section—

“**home**” means a building, caravan or other structure in which an individual lives.

179 Procedure for entry with consent

(1) This section applies if a rail safety officer intends to ask an occupier of a place to consent to the officer or another rail safety officer entering the place.

(2) Before asking for the consent, the officer must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the officer consent to enter the place and exercise powers under a railway provision; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the officer must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

180 Procedure for other entries without warrant**(1)** This section applies if—

- (a) a rail safety officer intends to enter a place without the consent of an occupier of the place or a warrant, as authorised under section 178(1)(d); and
- (b) an occupier is present at the place.

(2) Before entering the place, the officer must tell, or make a reasonable attempt to tell, the occupier—

- (a) the purpose of the entry; and
- (b) that the officer is permitted under section 178(1)(d) to enter the place without the occupier's consent or a warrant.

181 Application for warrant

(1) A rail safety officer may apply to a magistrate for a warrant relating to a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the officer gives the magistrate all of the information the magistrate requires about the application in the way the magistrate requires.

Example for subsection (3)—

The magistrate may require additional information supporting the application to be given by statutory declaration.

182 Issue of warrant

(1) A magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of a railway offence; or
- (b) the evidence is at the place or, within the next 7 days, may be at the place.

(2) The warrant must state—

- (a) that a stated rail safety officer may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise powers under a railway provision; and
- (b) the railway offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

183 Special warrants

(1) A rail safety officer may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the officer reasonably believes it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the officer’s remote location.

(2) Before applying for the special warrant, the officer must prepare an application stating the grounds on which the warrant is sought.

(3) The officer may apply for the warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax or otherwise electronically communicate a copy (a “**facsimile warrant**”) to the officer if it is reasonably practicable to do so.

(5) If it is not reasonably practicable to fax or electronically communicate a copy to the officer—

- (a) the magistrate must tell the officer—
 - (i) what the terms of the special warrant are; and
 - (ii) the date and time the special warrant is issued; and
- (b) the officer must complete a form of warrant (a “**warrant form**”) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the special warrant; and
 - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The officer must, at the first reasonable opportunity, send the magistrate—

- (a) the sworn application; and
- (b) if the officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

184 Warrants—procedure before entry

(1) This section applies if—

- (a) a rail safety officer stated in a warrant issued under this division for a place is intending to enter the place under the warrant; and
- (b) a person is present at the place.

(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the officer's identity card or other document evidencing the officer's appointment;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form, a copy of the facsimile warrant or warrant form;
- (c) tell the person the officer is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the officer immediate entry to the place without using force.

(3) However, the officer need not comply with subsection (2) if the officer reasonably believes immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

(4) Subsection (2)(a) does not apply to a rail safety officer who is a police officer.²¹

Division 4—General powers of rail safety officers

185 General powers after entering place

(1) This division applies to a rail safety officer who, under division 3, enters a place.

(2) However if, under section 178(2),²² the officer enters a place to ask the occupier's consent to enter a place, this division applies to the officer only if the consent is given or the entry is otherwise authorised.

(3) To the extent the officer reasonably considers it necessary for an inspection or investigation under a railway provision, the officer may do any of the following—

- (a) search any part of the place;

²¹ See the *Police Powers and Responsibilities Act 2000*, section 394 (Supplying police officer's details).

²² Section 178 (Power to enter places)

- (b) enter or open, using reasonable force, a structure, rolling stock, vehicle or other thing to examine the structure, rolling stock, vehicle or other thing;
- (c) inspect, film, photograph, videotape or otherwise record an image of a document, structure, rolling stock, vehicle or other thing at the place;
- (d) take, or authorise another person to take, for analysis a thing, or a sample of or from the thing, at the place;
- (e) mark, tag or otherwise identify rolling stock, a vehicle or other thing at the place;
- (f) take an extract from, or copy, a document at the place;
- (g) take into the place the equipment, materials or persons the officer reasonably requires for exercising a power under this part;
- (h) take a necessary step to allow a power under paragraphs (a) to (g) to be exercised.

(4) If the officer takes a sample or thing for analysis under subsection (3)(d), the officer must—

- (a) give a receipt for the sample or thing to the person in charge of the thing or place from which it was taken; and
- (b) for a sample or thing with an intrinsic value—at the end of 6 months after the sample or thing was taken, return it to the person who appears to be the owner of it or the person in charge of the thing or place from which it was taken.²³

(5) However, if for any reason it is not practicable to comply with subsection (4)(a), the officer must leave the receipt at the place in a conspicuous position and in a reasonably secure way.

186 Procedure before entering or opening rolling stock or vehicle

(1) If a relevant person is present at rolling stock or a vehicle, the rail safety officer must do or make a reasonable attempt to do the following before entering the rolling stock or vehicle under section 185—

- (a) tell the relevant person the purpose of the entry;

²³ See section 199(1) (Forfeiture by rail safety officer) for what happens if a sample or thing can not be returned to its owner or the owner can not be found.

- (b) ask for the consent of the relevant person to the entry;
- (c) tell the relevant person the officer is permitted under a railway provision to enter the rolling stock or vehicle without consent;
- (d) for a vehicle—if the relevant person is not the owner of the vehicle, advise the vehicle’s owner of the officer’s intention to enter it.

(2) If a relevant person is not present at rolling stock or a vehicle, before entering the rolling stock or vehicle, the officer must—

- (a) take reasonable steps to find a relevant person for the rolling stock or vehicle; and
- (b) comply with subsection (1)(a) to (c) for the relevant person if found.

(3) Subsections (1)(d) and (2) do not require the officer to take a step the officer reasonably believes may frustrate or otherwise hinder an inspection or investigation under a railway provision or the purpose of the intended entry.

(4) In this section—

“**relevant person**” means—

- (a) for rolling stock—a person who is the driver or guard of, or engineer for, the rolling stock; or
- (b) for a vehicle—a person who appears to be the driver, or to be in control, of the vehicle.

187 Power to require reasonable help or information

(1) A rail safety officer may require the occupier of, or someone else at, a place entered into under division 3 to give the officer—

- (a) reasonable help to exercise a power under a railway provision; or
- (b) information to help the officer ascertain whether a railway provision is being complied with.

Example for subsection (1)—

When inspecting rolling stock, a rail safety officer may ask the driver of the rolling stock to accompany the officer or to explain how a piece of equipment is used as part of the accredited person’s approved safety management system for the railway or for the operation of rolling stock on the railway.

(2) When making a requirement under subsection (1), the officer must warn the person that it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(3) A person required to give reasonable help under subsection (1)(a), or give information under subsection (1)(b), must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement to give information if complying with the requirement might tend to incriminate the person.

188 Power to stop rolling stock or vehicle that may be entered or opened

(1) If rolling stock or a vehicle that a rail safety officer may enter or open under a railway provision is moving or about to move, the officer may—

- (a) require the accredited person for the rolling stock or vehicle to stop the rolling stock or vehicle at, not move the rolling stock or vehicle from, or move the rolling stock or vehicle to, a stated place; or
- (b) ask or signal the person in control of the rolling stock or vehicle to stop the rolling stock or vehicle at, or not move the rolling stock or vehicle from, a stated place.

(2) Before making a request or giving a signal under subsection (1)(b) relating to rolling stock, the officer must—

- (a) consult with the train controller for the rolling stock about whether it is safe to stop the rolling stock at, or not move the rolling stock from, the place taking into account other rolling stock; and
- (b) disrupt the operation of rolling stock on the railway only to the extent that is reasonably necessary.

(3) An accredited person of whom a requirement is made under subsection (1)(a) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) The person in control of rolling stock, or a vehicle, to whom a request is made or signal given under subsection (1)(b) must comply with the request or signal, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(5) It is a reasonable excuse for the person in control of rolling stock or a vehicle not to comply with the request or signal if—

- (a) to immediately comply with the request or signal would—
 - (i) endanger the person or someone else; or
 - (ii) cause damage to rail transport infrastructure, rolling stock or a vehicle; and
- (b) the person complies with the request or signal as soon as is practicable to comply with it.

(6) In this section—

“train controller”, for rolling stock, means an individual who is in control of train control signalling and communication for the section of track on which the rolling stock is moving or stationary.

189 Other powers about rolling stock or vehicles that may be entered

(1) If a rail safety officer enters or opens rolling stock or a vehicle under a railway provision, the officer may require the person in control of the rolling stock or vehicle—

- (a) to give the officer reasonable help to enter or open the rolling stock or vehicle; or
- (b) to bring the rolling stock or vehicle to a stated reasonable place and remain in control of the rolling stock or vehicle for a reasonable period to allow the officer to exercise a power under a railway provision.

(2) When making a requirement under subsection (1), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(3) A person must not fail to comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—100 penalty units.

Division 5—Seizure**190 Power to seize evidence if entry without consent or warrant**

A rail safety officer who enters a place under a railway provision, without consent and without a warrant, may seize a thing at the place only if the officer reasonably believes—

- (a) the thing is evidence of a railway offence; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) destroyed, hidden or lost; or
 - (ii) used to commit, continue or repeat, a railway offence.

191 Power to seize evidence if entry with consent or warrant

(1) This section applies if a rail safety officer enters a place under a power under a railway provision with the necessary consent of a person or with a warrant.

(2) If the officer enters a place with the necessary consent, the officer may seize a thing at the place if—

- (a) the officer reasonably believes the thing is evidence of a railway offence; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the person when asking for the person's consent.

(3) If the officer enters the place with a warrant, the officer may seize a thing that is the evidence for which the warrant was issued.

(4) The officer may seize anything else at the place if the officer reasonably believes—

- (a) the thing is evidence of a railway offence; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) destroyed, hidden or lost; or
 - (ii) used to commit, continue or repeat a railway offence.

192 Securing seized things

Having seized a thing, a rail safety officer may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or

Examples of restricting access to a thing—

1. Marking, sealing, tagging or otherwise identifying the thing to show access to it is restricted.
2. Sealing the entrance to a room where the thing is situated and marking the entrance to show access to the thing is restricted.

- (c) for equipment—make it inoperable.

Example of making equipment inoperable—

Dismantling equipment or removing a component of equipment without which the equipment is not capable of being used.

193 Offence to tamper with seized thing

(1) If a rail safety officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without a rail safety officer’s approval.

Maximum penalty—60 penalty units.

(2) If a rail safety officer makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without a rail safety officer’s approval.

Maximum penalty—60 penalty units.

194 Powers to support seizure

(1) To enable a thing to be seized, a rail safety officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

(2) The requirement—

- (a) must be made by signed notice given to the person; or

- (b) if for any reason it is not practicable to give a signed notice to the person—may be made orally and confirmed by signed notice given to the person as soon as is practicable.

(3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

Examples of a further requirement—

A requirement that the thing—

- be transported during stated off-peak hours
- be transported along a particular route
- be transported in a particular way.

(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(5) Subject to the provisions of this part providing for compensation,²⁴ the cost of complying with subsection (1) or (3) must be borne by the person.

(6) For this section, a person is “**in control**” of a thing if the person has, or reasonably appears to a rail safety officer to have, authority to exercise control over the thing.

195 Rail safety officer may require thing’s return

(1) If a rail safety officer has required a person to take a thing to a stated reasonable place by a stated reasonable time under a railway provision, the officer may require the person to return the thing to the place from which it was taken.

(2) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) Subject to the provisions of this part providing for compensation, the cost of complying with subsection (1) must be borne by the person.

²⁴ See section 213 (Compensation).

196 Receipt for seized thing

(1) After a rail safety officer seizes a thing, the officer must give a receipt for it to the person from whom the thing was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally the thing seized and its condition.

(4) This section does not apply to a thing if it would be impracticable or unreasonable to expect the officer to account for the thing given its condition, nature and value.

197 Return of seized thing

(1) This section applies to a seized thing if—

- (a) the thing has some intrinsic value; and
- (b) the thing has not been forfeited under division 6.

(2) A rail safety officer must return the thing to its owner—

- (a) at the end of 6 months after the seizure; or
- (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.

(3) Despite subsection (2), the officer must return a thing seized as evidence if the officer stops being satisfied—

- (a) its continued retention as evidence is necessary; and
- (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, an offence.

198 Access to seized thing

(1) Until a seized thing is forfeited or returned, a rail safety officer must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Division 6—Forfeiture**199 Forfeiture by rail safety officer**

(1) A sample or thing taken for analysis under section 185(3)(d),²⁵ or a thing seized under division 5, is forfeited to the State if the rail safety officer who took, or arranged the taking of, the sample or thing or who seized the thing—

- (a) after making reasonable efforts, can not return it to its owner; or
- (b) after making reasonable inquiries, can not find its owner.

(2) For subsection (1), the officer is not required to—

- (a) make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner; or
- (b) make inquiries if it would be unreasonable to make inquiries to find the owner.

Example for paragraph (b)—

The owner of the sample or thing has migrated to another country.

(3) Regard must be had to the sample's or thing's condition, nature and value in deciding—

- (a) whether it is reasonable to make efforts or inquiries; and
- (b) if efforts or inquiries are made—what efforts or inquiries, including the period over which they are made, are reasonable.

(4) In this section—

“**owner**”, for a sample or a thing taken for analysis, means the person in charge of the thing or place from which the sample or thing was taken.

200 Forfeiture on conviction

(1) On conviction of a person for a railway offence, the court may order the forfeiture to the State of anything owned by the person and seized under division 5.

(2) The court may make any order to enforce the forfeiture it considers appropriate.

²⁵ Section 185 (General powers after entering place)

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

201 Dealing with forfeited sample or thing

(1) On forfeiture of a sample or thing to the State, the sample or thing becomes the State's property and may be dealt with by the chief executive in a way the chief executive reasonably believes is appropriate.

(2) Without limiting subsection (1), the chief executive may destroy or dispose of the sample or thing.

Division 7—Other powers

202 Power to require name and address

(1) A rail safety officer may require a person to state the person's name and residential or business address if the officer—

- (a) finds the person committing a railway offence; or
- (b) finds the person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has just committed a railway offence; or
- (c) finds the person at a railway workplace, reasonably believes the person is an employee of an accredited person and reasonably considers that it is necessary for the purposes of a railway provision to know the person's name and residential or business address.

(2) When making the requirement, the officer must warn the person it is an offence to fail to state the person's name or address unless the person has a reasonable excuse.

(3) The officer may also require the person to give evidence of the correctness of the stated name or required address if the officer reasonably suspects the stated name or address is false.

203 Failure to give name or address

(1) A person of whom a requirement is made under section 202(1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
- (a) the requirement was given because the rail safety officer reasonably suspected the person had committed a railway offence; and
 - (b) the person is not proved to have committed the railway offence.

204 Power to require information about contravention

(1) This section applies if a rail safety officer reasonably believes—

- (a) a railway provision has been contravened; and
- (b) a person may be able to give information about the contravention.

(2) The officer may require the person to give information within the person's knowledge about the contravention in a stated reasonable time and in a stated reasonable way.

(3) When making a requirement under subsection (2), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

205 Failure to give information about contravention

(1) A person of whom a requirement is made under section 204 must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(2) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.

206 Power to require production of documents

(1) A rail safety officer may require an accredited person to make available for inspection by the officer, or produce to the officer for inspection, at a stated reasonable time and place, a document—

- (a) that is required to be kept by the accredited person under the approved safety management system for a railway managed, or

for the operation of rolling stock on a railway, by the accredited person; or

- (b) that is prepared under the approved safety management system for a railway managed, or for the operation of rolling stock on a railway, by the accredited person and that the officer reasonably believes is necessary for the officer to consider to understand or verify a document that is required to be kept under the system.

Example for paragraph (b)—

The approved safety management system may require testing of equipment as part of a scheduled maintenance program and a record of the results of the test to be kept. If an item of equipment is tested under the approved safety management system, the document that states the results of the test is a document prepared under the approved safety management system.

(2) When making a requirement under subsection (1), the officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

(3) The officer may keep the document to copy it but must return the document to the accredited person after copying it.

207 Failure to produce document

(1) A person required to make available, or produce, for inspection a document under section 206 must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(2) It is not a reasonable excuse for a person that complying with the requirement might tend to incriminate the person.

Division 8—Offences relating to rail safety officers

208 False or misleading statements

(1) A person must not state anything to a rail safety officer, in relation to the officer's exercise of a power under a railway provision, that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

209 False or misleading documents

(1) A person must not give a rail safety officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person if the person when giving the document—

- (a) tells the officer to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) In a proceeding for an offence against subsection (1), it is enough to state the document was ‘false or misleading’ to the person’s knowledge, without specifying which.

210 Obstruction of rail safety officer

(1) A person must not obstruct a rail safety officer, in relation to the officer’s exercise of a power under a railway provision, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If a person has obstructed a rail safety officer and the officer decides to proceed with the exercise of the power, the officer must warn the person that—

- (a) it is an offence to obstruct the officer unless the person has a reasonable excuse; and
- (b) the officer reasonably believes the person’s conduct is an obstruction.

(3) In this section—

“**obstruct**” includes assault, hinder, resist and attempt or threaten to obstruct.

211 Impersonating a rail safety officer

A person must not pretend to be a rail safety officer.

Maximum penalty—100 penalty units.

Division 9—Notice of damage and compensation**212 Notice of damage**

(1) This section applies if—

- (a) a rail safety officer damages something when exercising, or purporting to exercise, a power under a railway provision; or
- (b) a person acting under the direction or authority of the officer damages something.

(2) The officer must give a signed notice to the person who appears to the officer to be the owner or person in possession of the thing.

(3) If for any reason it is not practicable to comply with subsection (2), the officer must leave the notice in a conspicuous position and in a reasonably secure way at the place where the damage happened.

(4) The notice must state—

- (a) the particulars of the damage; and
- (b) that the person who suffered the damage may claim compensation under section 213.

(5) If the officer reasonably believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the officer or person acting under the direction or authority of the officer, the officer may state the belief in the notice.

(6) However, a rail safety officer need not comply with this section if the officer reasonably believes the damage is trivial.

213 Compensation

(1) This section applies if a person incurs loss or damage because of the exercise, or purported exercise, of a power under a railway provision, other than because of a forfeiture under section 199 or 200.²⁶

(2) The person is entitled to be paid the reasonable compensation because of the loss or damage that is agreed between the chief executive and the person, or failing agreement, decided by a court.

(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for a railway offence brought against the person claiming compensation.

(4) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

PART 6—RAILWAY INCIDENTS*Division IAA—Preliminary***213A Objects**

(1) The objects of this part are to provide for—

- (a) the reporting of incidents on or involving a railway; and
- (b) the investigation of or inquiry into incidents on or involving a railway, including—
 - (i) investigations or inquiries independent of an accredited person for the railway; and
 - (ii) investigations or inquiries conducted to find out the cause of the incidents and to make recommendations about improvements to safety of transport by rail.

²⁶ Section 199 (Forfeiture by rail safety officer) or 200 (Forfeiture on conviction)

(2) The following are not objects of this part—

- (a) to apportion blame to individuals for incidents on or involving a railway;
- (b) to provide the way to decide the liability of any individual in relation to an incident on or involving a railway;
- (c) to help in court proceedings between parties, except as expressly provided by this part;
- (d) to allow any adverse inference to be drawn from the fact that an individual is involved in an investigation or inquiry.

(3) Subsection (2) does not make evidence inadmissible in a civil or criminal proceeding unless this part states the evidence is not admissible in the proceeding.

213B Definitions for pt 6

In this part—

“civil or criminal proceeding” includes an administrative proceeding for the discipline of an individual.

“coronial procedure” means any of the following under the *Coroners Act 2003*—

- (a) the making of a decision for section 30 of that Act;
- (b) an inquest;
- (c) an investigation;
- (d) a conference under section 34 of that Act.

“court” includes any tribunal, authority, person or body that has power to require the production of documents or answering of questions, but does not include the Legislative Assembly or a commission of inquiry under the *Commissions of Inquiry Act 1950*.

“data logger recording” means a recording from a device installed on a locomotive or self-propelled rolling stock that records rolling stock event data related to operational performance of the locomotive or self-propelled rolling stock.

“data logger recording information” means—

- (a) a data logger recording or part of a data logger recording; or

- (b) a copy or printout of all or part of a data logger recording; or
- (c) any information obtained from a data logger recording or part of a data logger recording.

“individual” does not include an accredited person.

“inquiry” means an inquiry conducted by a board of inquiry established or re-established under section 219.

“investigation” means an investigation under this part of an incident on or involving a railway by a rail safety officer.

“relevant person” see section 239AE.

“restricted information” means any of the following, other than data logger recording information—

- (a) a statement, whether oral or in writing, obtained from a person in the course of an investigation or inquiry, including any record of the statement;
- (b) all information recorded in the course of an investigation or inquiry;
- (c) all communications in the course of an investigation or inquiry with a person involved in the operation of rolling stock that is or was the subject of an investigation or inquiry;
- (d) medical or private information regarding persons, including deceased persons, involved in an incident that is being or has been investigated or that is or has been the subject of an inquiry;
- (e) in relation to rolling stock that is or was the subject of an investigation or an inquiry—information recorded for the purposes of monitoring or directing the progress of the rolling stock from 1 place to another or information recorded about the operation of the rolling stock;
- (f) records of the analysis of information or anything else obtained in the course of an investigation or inquiry, including opinions expressed by a person in that analysis;
- (g) information contained in a document that is given to a rail safety officer or board of inquiry in connection with this part.

Division 1—Report of railway incident**214 Reporting serious incidents**

(1) If an accredited person for a railway becomes aware that a serious incident has happened on or involving the railway, the person must report the incident to the chief executive under guidelines made under subsection (2).

Maximum penalty—200 penalty units.

(2) The chief executive may make, and give to all accredited persons, written guidelines—

- (a) to which they are to have regard in deciding whether an incident is one to which subsection (1) applies; or
- (b) about the information that must be included in reports under the subsection; or
- (c) about the times within which reports must be made to the chief executive; or
- (d) about the form in which reports must be made.

Example for subsection (2)—

A guideline may include a form and require that, within 2 hours of an accredited person for a railway becoming aware of a serious incident on or involving the railway, the person must fax the form to a number stated on the form, or telephone a telephone number stated on the form and tell the person answering the phone the information stated on the form.

(3) In making a guideline, the chief executive must consult with all accredited persons.

(4) A guideline has no effect unless the Minister notifies the making of the guideline.

(5) The notice must state the places where copies of the guideline, and the provisions of any document applied, adopted or incorporated by the guideline, are available for inspection, without charge, during normal business hours.

(6) The notice is subordinate legislation.

215 Request for report or incident details

(1) This section applies if the chief executive becomes aware that—

- (a) a serious incident on or involving a railway may have happened even if the incident has not been reported; or
- (b) an incident, other than a serious incident, on or involving a railway may have happened.

(2) The chief executive may require an accredited person for the railway to give the chief executive a written report, or stated written details, about the incident within a stated reasonable period.

(3) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—200 penalty units.

Division 2—Investigation of railway incident

216 Investigations by rail safety officer

(1) This section applies if—

- (a) a serious incident on or involving a railway happens; or
- (b) the chief executive becomes aware that a serious incident, or an incident other than a serious incident, on or involving a railway may have happened, even if it has not been reported.

(2) The chief executive may require a rail safety officer to investigate the matter.

(3) If a report has been given to the chief executive about the incident, the chief executive may require the officer to investigate the matter by reviewing the report.

(4) After finishing the investigation, the officer must give a report of the results of the investigation (the “**RSO report**”) to the chief executive, including whether or not the officer reasonably considers the incident a serious incident and the reasons for considering the incident a serious incident.

(5) The chief executive must give the Minister a copy of the RSO report within 14 days after receiving the report.

(6) The Minister must table in the Legislative Assembly a copy of the RSO report within 14 days after receiving the report.

(7) The following is not admissible in evidence in any civil or criminal proceeding—

- (a) the RSO report;
- (b) any report prepared by the rail safety officer as an interim RSO report;
- (c) any report prepared by the rail safety officer as a draft RSO report for the purposes of consultation.

(8) However, subsection (7) has no effect on the use or admissibility of any type of report mentioned in the subsection in a coronial procedure.

217 Power of rail safety officer to investigate incident

(1) This section applies if—

- (a) an incident on or involving a railway has, or may have, happened; and
- (b) a rail safety officer is investigating the incident, whether or not at the chief executive's request.

(2) If the officer reasonably needs help in investigating the incident, the officer may require a person to give the officer reasonable help in the investigation.

(3) A requirement may only be made of a person whom the officer reasonably believes is competent to give the help.

(4) If the rail safety officer reasonably believes it necessary for the purposes of the investigation, the rail safety officer may require a person to—

- (a) answer questions relevant to the incident; or
- (b) produce documents or other things relevant to the incident.

(5) The officer may require an employee of a railway manager or operator to take an alcohol test, drug test or medical examination if the officer reasonably suspects—

- (a) the employee caused, or was directly involved in, the incident; and
- (b) the result of the test or examination may help in deciding the circumstances and probable causes of the incident.

(6) The test mentioned in subsection (5) must take place within 2 hours after the incident happens.

(7) The medical examination mentioned in subsection (5) must take place within a reasonable time after the officer forms the reasonable suspicions about the employee under the subsection.

(8) The cost of the test or examination must be paid by the employee's employer.

(9) A person must comply with a requirement under this section, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(9A) It is not a reasonable excuse for a person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person or make the person liable to a penalty.

(9B) Subsection (9C) applies to the following (“**primary evidence**”)—

- (a) any help given by an individual to a rail safety officer in investigating an incident in response to a requirement under subsection (2);
- (b) any answer given by an individual to a question mentioned in subsection (4)(a) to a rail safety officer in investigating an incident in response to a requirement under subsection (4)(a);
- (c) a document or other thing mentioned in subsection (4)(b) produced by an individual to a rail safety officer in investigating an incident, and the fact of that production, in response to a requirement under subsection (4)(b);
- (d) the results of an alcohol test, drug test or medical examination of an individual mentioned in subsection (5).

(9C) The following is not admissible in evidence against an individual in any civil or criminal proceeding—

- (a) primary evidence;
- (b) any information, or document or other thing, obtained as a direct or indirect result of primary evidence (“**derived evidence**”).

(9D) Subsection (9C) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

(10) When making a requirement of an individual under this section, a rail safety officer must—

- (a) warn the individual it is an offence to fail to comply with the requirement unless the individual has a reasonable excuse; and
- (b) advise the individual that—
 - (i) it is not a reasonable excuse that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty; and
 - (ii) anything obtained under the requirement, and any evidence derived directly or indirectly from anything obtained under the requirement, is not admissible in evidence against the individual in any civil or criminal proceeding.

(11) If the person refuses to take a test mentioned in subsection (5), the person may be taken, for a purpose prescribed under a regulation, to have been under the influence of alcohol or a drug when the incident happened, in the absence of evidence to the contrary.

(12) In this section—

“**alcohol test**” includes—

- (a) a preliminary test to give an indication of the presence or absence of alcohol in a person’s breath; and
- (b) a test to analyse a person’s blood or breath to determine the person blood alcohol concentration.

“**drug**” means—

- (a) every substance or article which is a dangerous drug under and within the meaning of the *Drugs Misuse Act 1986*; or
- (b) any other substance, article, preparation or mixture (with the exception of liquor) whether gaseous, liquid, solid, or in any other form that, when consumed or used by any person, deprives the person either temporarily or permanently of any of the person’s normal mental or physical faculties.

218 Compensation

(1) This section applies if a person incurs loss or expense because of the exercise or purported exercise by a rail safety officer of a power under this

part, including, for example, in complying with a requirement made of the person.

(2) The person may claim compensation for the loss or expense from the employing authority.

(3) Payment of compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(5) A regulation may prescribe matters that may, or must, be taken into account by the court in considering whether it is just to make the order.

(6) In this section—

“**employing authority**”, of a rail safety officer, means—

- (a) if the officer is an employee of an accredited person—the accredited person; or
- (b) in any other case—the State.

Division 3—Boards of inquiry

Subdivision 1—General

219 Minister may establish or re-establish boards of inquiry

(1) The Minister may, by gazette notice, establish or re-establish a board of inquiry about an incident that—

- (a) has happened on or involving a railway; and
- (b) the Minister considers is a serious incident.

(2) The notice, or a subsequent gazette notice, may specify matters relevant to the inquiry, including, for example, the number and appointment of members, the chairperson and the terms of reference.

(3) The Minister may exercise powers under this section for an incident—

- (a) whether or not the incident has been investigated under division 2;²⁷ or
- (b) whether or not a board of inquiry has previously inquired into the incident.

220 Role of board of inquiry

(1) The board of inquiry must—

- (a) inquire into the circumstances and probable causes of the relevant incident; and
- (b) give the Minister a written report of the board's findings.

(2) The report may contain the recommendations the board considers appropriate and other relevant matters.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

(4) However, if the board gives the Minister a separate report of matters that the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

(5) The following is not admissible in evidence in any civil or criminal proceeding—

- (a) a report under this section;
- (b) any report prepared by the board as an interim report under this section;
- (c) any report prepared by the board as a draft report under this section for the purposes of consultation.

(6) However, subsection (5) has no effect on the use or admissibility of any type of report mentioned in the subsection in a coronial procedure.

27 Division 2 (Investigation of railway incident)

221 Conditions of appointment

(1) Members of the board of inquiry are entitled to be paid the fees and allowances that may be decided by the Minister.

(2) The members hold office on the terms not provided by this Act that may be decided by the Minister.

222 Chief executive to arrange for services of staff and financial matters for board of inquiry

As soon as practicable after the board of inquiry is established, the chief executive must consult with the chairperson of the board and arrange—

- (a) for the services of officers and employees of the department, rail safety officers and other persons to be made available to the board for the conduct of the inquiry; and
- (b) for financial matters relevant to the board.

223 Rail safety officer may exercise powers for board's inquiry

(1) This section applies to a rail safety officer whose services have been made available to the board of inquiry.

(2) The rail safety officer may exercise powers under a railway provision for the incident the subject of the board's inquiry.

*Subdivision 2—Conduct of inquiry***224 Procedure**

(1) In conducting its inquiry, the board of inquiry—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

(2) In conducting the inquiry, the board—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate, including, for example, holding hearings; and

(c) may decide the procedures to be followed for the inquiry.

(3) However, the board must comply with this division and any procedural rules prescribed under a regulation.

(4) The chairperson presides at the inquiry.

225 Notice of inquiry

The chairperson of the board of inquiry must give at least 14 days written notice of the time and place of the inquiry to anyone who the chairperson has reason to believe should be given the opportunity to appear at the inquiry.

226 Inquiry to be held in public other than in special circumstances

(1) An inquiry must be held in public.

(2) However, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present.

(3) The board may direct that the inquiry be held in private only if satisfied it is proper to make the order in the special circumstances of the inquiry.

227 Protection of members, legal representatives and witnesses

(1) A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a judge of the Supreme Court.

(2) A lawyer or other person appearing before the board for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(3) A person summoned to attend or appearing before the board as a witness has the same protection as a witness in a proceeding in the Supreme Court.

228 Record of proceedings to be kept

The board of inquiry must keep a record of its proceedings.

229 Procedural fairness and representation

In conducting the inquiry, the board must give anyone directly concerned in the incident the subject of the inquiry, the opportunity of making a defence to all claims made against the person either in person or by lawyer or agent.

230 Board's powers on inquiry

(1) In conducting the inquiry, the board may—

- (a) act in the absence of any person who has been given a notice under section 225²⁸ or some other reasonable notice; and
- (b) receive evidence on oath or affirmation or by statutory declaration; and
- (c) adjourn the inquiry; and
- (d) disregard any defect, error, omission or insufficiency in a document; and
- (e) permit or refuse to permit a person, including a lawyer, to represent someone else at the inquiry.

(2) A member of the board may administer an oath or affirmation to a person appearing as a witness before the inquiry.

231 Notice to witness

(1) The chairperson of the board of inquiry may, by written notice given to a person, require the person to attend the inquiry at a stated time and place to give evidence or produce stated documents or things.

(2) A person required to appear as a witness before the board is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

232 Inspection of documents or things

(1) If a document or other thing is produced to the board at the inquiry, the board may—

28 Section 225 (Notice of inquiry)

- (a) inspect the thing; and
- (b) make copies of, photograph, or take extracts from, the thing if it is relevant to the inquiry.

(2) The board may also take possession of the thing, and keep it while it is necessary for the inquiry.

(3) While it keeps a thing, the board must permit a person otherwise entitled to possession of the thing to inspect, make copies of, photograph, or take extracts from, it, at a reasonable place and time that the board decides.

233 Inquiry may continue despite court proceedings unless otherwise ordered

The inquiry of the board of inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

234 Offences by witnesses

- (1) A person given a notice under section 231²⁹ must not—
- (a) fail, without reasonable excuse, to attend as required by the notice; or
 - (b) fail, without reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—60 penalty units.

- (2) A person appearing as a witness at the inquiry must not—
- (a) fail to take an oath or make an affirmation when required by the chairperson of the board; or
 - (b) fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board; or

29 Section 231 (Notice to witness)

- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 231.

Maximum penalty—60 penalty units.

235 Self-incrimination

(1) A person appearing as a witness at the inquiry is not excused from—

- (a) answering a question put to the person at the inquiry; or
- (b) producing a document or other thing at the inquiry;

on the ground that the answer or producing the thing might tend to incriminate the person or make the person liable to a penalty.

(2) The following is not admissible in evidence against an individual in any civil or criminal proceeding—

- (a) any answer given at the inquiry by the individual, and any document or other thing produced at the inquiry by the individual and the fact of that production, in response to a requirement under this division (“**primary evidence**”);
- (b) any information, or document or other thing, obtained as a direct or indirect result of primary evidence (“**derived evidence**”).

(3) Subsection (2) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

236 False or misleading statements

(1) A person must not—

- (a) state anything to the board of inquiry that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the board of inquiry anything without which the statement is, to the person’s knowledge, misleading in a material particular.

Maximum penalty—200 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person’s knowledge.

237 False, misleading or incomplete documents

(1) A person must not give to the board of inquiry a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the board, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably get the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

238 Contempt of board

A person must not—

- (a) insult the board of inquiry; or
- (b) deliberately interrupt the inquiry; or
- (c) create or continue or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or
- (d) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—60 penalty units.

239 Change of membership of board

The inquiry of the board of inquiry is not affected by a change in its membership.

Division 4—Protection of particular information**239AA Limitations on disclosure etc. of restricted information**

(1) A person who is or has been a relevant person must not make a record of restricted information.

Maximum penalty—2 years imprisonment.

(2) A person who is or has been a relevant person must not disclose restricted information to any person or to a court.

Maximum penalty—2 years imprisonment.

(3) A person who has, or had, access to restricted information under section 239AD³⁰ must not—

- (a) make a record of the information; or
- (b) disclose the information to any person or to a court.

Maximum penalty—2 years imprisonment.

(4) Subsection (1), (2) or (3) does not apply to—

- (a) anything done by a person in performing functions under this Act or in connection with this Act; or
- (b) without limiting paragraph (a), disclosure to any board of inquiry; or
- (c) disclosure to a court in criminal proceedings for an offence against this part; or
- (d) disclosure to a court in civil proceedings if—
 - (i) the chief executive issues a certificate under subsection (6); and
 - (ii) the court makes an order under subsection (7).

(5) In a proceeding for an offence against subsection (1), (2) or (3), the onus is on the defendant to adduce or point to evidence that suggests a reasonable possibility that subsection (4) applies.

³⁰ Section 239AD (Chief executive may authorise persons to have access to restricted information)

(6) The chief executive may issue a certificate about restricted information stating that the disclosure of the information is not likely to interfere with any current or future investigation or inquiry.

(7) If the court is satisfied that any adverse domestic and international impact that the disclosure of the information might have on any current or future investigations or inquiries is outweighed by the public interest in the administration of justice, the court may order the disclosure.

(8) A court in which a disclosure mentioned in subsection (4)(c) or (d) is made may direct that the restricted information, or any information obtained from the restricted information, must not—

- (a) be published or communicated to any person; or
- (b) be published or communicated other than in the way, and to the persons, the court states.

(9) If a person is prohibited by this section from disclosing restricted information—

- (a) the person can not be required by a court to disclose the information; and
- (b) any information disclosed by the person in contravention of this section is not admissible in any civil or criminal proceeding, other than a proceeding against the person under this section.

239AB Release of restricted information in the interests of safety of transport by rail

(1) The chief executive may disclose restricted information to any person if the chief executive considers that the disclosure is necessary or desirable for the purposes of safety of transport by rail.

(2) However, the chief executive may only disclose restricted information that is, or that contains, personal information in the circumstances prescribed under a regulation.

(3) In this section—

“personal information” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

239AC Authorisation of coroner to have access to restricted information

(1) This section applies if a coroner requests or requires the chief executive to give restricted information to the coroner.

(2) The chief executive must give the restricted information to the coroner.

239AD Chief executive may authorise persons to have access to restricted information

The chief executive may authorise someone other than a relevant person to have access to restricted information if the chief executive considers that it is necessary or desirable to do so.

*Division 5—Relevant persons***239AE Meaning of “relevant person”**

A “relevant person” is 1 of the following—

- (a) the chief executive;
- (b) a rail safety officer—
 - (i) who is required to investigate an incident under section 216(2);³¹ or
 - (ii) who is not required to investigate an incident under section 216(2) but who is investigating the incident for the purpose of finding out its cause as opposed to finding evidence of a suspected offence; or
 - (iii) whose services are made available to a board of inquiry under section 222;
- (c) another person made available to help a board of inquiry in any capacity.

31 Section 216 (Investigations by rail safety officer)

239AF Certification by chief executive of relevant person's involvement in investigation

The chief executive may issue a certificate stating that a stated person who is or has been a relevant person is involved, or has been involved, in an investigation or inquiry about a stated incident.

239AG Relevant persons not compellable as witnesses

(1) A person who is or has been a relevant person is not obliged to comply with a subpoena or similar direction of a court to attend and answer questions about an incident if the chief executive has issued a certificate under section 239AF for the person in relation to the incident.

(2) A relevant person is not compellable to give an expert opinion in any civil or criminal proceeding in relation to safety of transport by rail.

(3) This section does not apply to an inquiry or coronial inquest.

(4) In this section—

“expert opinion” means an opinion that requires specialised knowledge based on training, study or experience.

PART 7—LAND FOR RAILWAY PURPOSES**239A Effect of resumption of particular interests in land**

(1) This section applies if, under the resumption laws, the chief executive, for the State, acquires an interest in land that is less than a freehold interest (the **“acquired land”**) for use by a railway manager as part of a rail transport corridor.

(2) The acquired land is free of any interest or obligation arising under the interest that was acquired.

(3) The chief executive, for the State, may exercise all the powers of an owner in relation to the acquired land.

(4) The chief executive must, as soon as practicable, arrange for the acquired land to become unallocated State land for the purposes of section 240.

(5) However, the chief executive may delay the acquired land becoming unallocated State land until any proposed rail transport infrastructure is built or substantially built and the boundaries of the land are more accurately defined.

(6) The *Acquisition of Land Act 1967*, section 12(2A),³² does not apply to the acquired land.

(7) In this section—

“**resumption laws**” means—

- (a) the *Transport Planning and Coordination Act 1994*, section 25;³³ and
- (b) the *Acquisition of Land Act 1967*.

240 Lease of land to railway managers

(1) This section applies if—

- (a) the State acquires land (the “**acquired land**”) for use by a railway manager as part of a rail transport corridor; or
- (b) the chief executive decides that land (also “**acquired land**”) leased to the State under section 215³⁴ should be used by a railway manager as part of a rail transport corridor.

(2) If the acquired land mentioned in subsection (1)(a) becomes unallocated State land, the Governor in Council must lease it to the State under the *Land Act 1994*, section 17.³⁵

(3) The lease is in perpetuity and, if demanded, for a rent of \$1 per year.

(4) The State must lease acquired land mentioned in subsection (1)(a) or (b) to the manager—

- (a) if the manager agrees to meet the full costs of the acquisition—
 - (i) for a term of not more than 100 years; and
 - (ii) for a rent, if demanded, of \$1 per year; and

32 *Acquisition of Land Act 1967*, section 12 (Effect of gazette resumption notice)

33 *Transport Planning and Coordination Act 1994*, section 25 (General powers regarding property)

34 Section 215 (Boundary identification etc.) expired on 30 June 2003.

35 *Land Act 1994*, section 17 (Granting land to the State)

(iii) on other terms decided by the chief executive; or

(b) otherwise—on terms agreed between the parties.

(5) A lease by the State under subsection (4)(a) may include an option to renew the lease.

(6) The terms of the option and the renewed lease are to be decided by the chief executive.

(7) The *Land Act 1994*, section 336(2)(a)³⁶ does not apply to a document of amendment of a sublease to a railway manager under subsection (4) or a sublease to a railway manager granted under the exercise of an option mentioned in subsection (5).

(8) If the manager attaches any rail transport infrastructure or any other works or structures to the acquired land, they remain the manager's property until the manager disposes of them.

(9) In this section—

“**acquires**” includes acquires by—

(a) gift; and

(b) surrender of a lease previously granted to a railway manager; and

(c) exchange; and

(d) purchase.

“**full costs**”, of an acquisition, includes (if the acquired land consists of a lease to the State) all rent or other money payable by the State under the lease granted to the State during the term of—

(a) the lease of the acquired land from the State to the manager under subsection (4); and

(b) any renewal of the lease to the manager.

241 Railway tunnel easements

(1) This section applies to an easement described in schedule 4, despite the terms of the easement.

(2) The benefit of the easement is taken to be vested in Queensland Rail.

(3) Queensland Rail may—

³⁶ *Land Act 1994*, section 336 (Amending a sublease)

- (a) transfer the benefit of the easement only to the State; or
- (b) surrender the easement only with the State's consent.

(4) If—

- (a) Queensland Rail remains the grantee of the easement; and
- (b) the easement is over, or adjoins, part of a railway tunnel corridor; and
- (c) Queensland Rail—
 - (i) surrenders a part of the sublease of rail corridor land that adjoins the railway tunnel corridor to the State; or
 - (ii) transfers the sublease of rail corridor land that adjoins the railway tunnel corridor to a railway manager;

Queensland Rail must transfer the benefit of the easement to the State.

(5) If Queensland Rail remains the grantee of the easement, Queensland Rail may grant a licence in relation to the easement to a railway operator.

(6) If the State becomes the grantee of the easement—

- (a) the State may grant a licence in relation to the easement to a railway manager; and
- (b) the railway manager may grant a sublicense to a railway operator.

(7) No compensation is payable to the grantor of the easement because of any vesting, transfer, licence or sublicense under this section.

(8) In this section—

“railway tunnel corridor” means a corridor of land within which a tunnel containing rail transport infrastructure is situated.

242 What is “future railway land”

(1) Land becomes **“future railway land”** when the chief executive, by written notice to the relevant local government and in the gazette, indicates that the land is intended to be used for a railway.

(2) Future railway land ceases to be future railway land when it is leased under section 240(4).

(3) If the chief executive decides that future railway land is no longer to be used for a railway, the chief executive must give written notice of that fact to the relevant local government and in the gazette.

243 Status of railway land

(1) The railway manager for corridor land is, for any rail transport infrastructure on the land or proposed to be constructed on the land, subject to the same controls and exemptions under State and local laws that an agency of the State would be if it had the manager's interest in the land.

(2) In this section—

“corridor land” means—

- (a) commercial corridor land that is not leased by the railway manager on a commercial basis; or
- (b) existing rail corridor land, or new rail corridor land, that is not subleased by the railway manager on a commercial basis; or
- (c) future railway land.

244 Existing rail transport infrastructure on land

(1) This section applies if at the commencement—

- (a) rail transport infrastructure was on land that is not owned or leased by Queensland Rail; and
- (b) the previous rail corporation had managed a railway using the rail transport infrastructure.

(2) After the commencement—

- (a) the rail transport infrastructure may stay on the land; and
- (b) the railway manager may—
 - (i) alter the rail transport infrastructure; and
 - (ii) manage the railway using the rail transport infrastructure, whether or not altered; and
 - (iii) operate, or authorise a railway operator to operate, rolling stock on the railway.

(3) A person has no interest in, or right to, the rail transport infrastructure (whether or not altered) on land only because the person has an interest in the land.

245 Existing buildings on land

(1) If, immediately before the commencement, a building of the previous rail corporation was lawfully on land—

- (a) it may stay on the land; and
- (b) its construction is not subject to any approval that did not affect it immediately before the commencement.

(2) If, immediately before the commencement, the previous rail corporation's activities were lawfully being carried out on the land, they may still be carried out on the land despite any change to the zoning of the land.

(3) In this section—

“**building**” includes a structure or works.

246 Railway works on corridor land

(1) The chief executive, for works carried out on corridor land that relate to rail transport infrastructure, must perform a function or exercise a power that, under the *Building Act 1975* or the *Integrated Planning Act 1997*, would be performed or exercised by a local government if this section had not been passed.

(2) In this section—

“**corridor land**” means commercial corridor land, existing rail corridor land, new rail corridor land, future railway land or non-rail corridor land.

247 Integrated Planning Act consent for rail corridor land and non-rail corridor land

(1) This section applies if a provision of the *Integrated Planning Act 1997* requires the consent of the owner of land.

(2) If the land is rail corridor land or non-rail corridor land, the chief executive is taken to be the owner of the land.

PART 8—GENERAL

248 Queensland Rail not a common carrier

Queensland Rail is not a common carrier.

249 Railways on State-controlled roads

(1) This section applies if—

- (a) a railway manager—
 - (i) holds a sublease of rail corridor land; or
 - (ii) has access to future railway land; and
- (b) the route of the rail corridor land or future railway land—
 - (i) is interrupted by a State-controlled road; and
 - (ii) continues on the other side of the State-controlled road.

(2) The Minister may, by gazette notice, declare the part of the State-controlled road where it interrupts the route to be a common area (“**common area**”) for the State-controlled road and the route of the rail corridor land or future railway land.

(3) If the Minister declares a common area—

- (a) the railway manager for the rail corridor land or future railway land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as a State-controlled road; and
- (b) the chief executive for chapter 6 may construct, maintain and operate the State-controlled road on the common area in a way not inconsistent with its use as a railway; and
- (c) the chief executive for chapter 6 and the chief executive’s agents or employees do not have any liability for the railway or its use or operation on the common area.

Examples for paragraph (a)—

- a level crossing
- a bridge or other structure over the road
- a bridge or other structure that allows the railway to pass under the road.

(4) After a common area is declared—

- (a) the chief executive must give a copy of the gazette notice to the registrar of titles—
 - (i) promptly after the gazette notice is published, if the land is rail corridor land; or
 - (ii) promptly after the land is leased to the railway manager under section 240(4), if the land is future railway land; and
- (b) the registrar of titles must record the declaration on the relevant lease of the rail corridor land to the State and the sublease in the leasehold land register.

(5) If a railway on a common area stops being used, the railway manager for the railway is responsible for the cost of removing rail transport infrastructure from the common area and restoring the road, unless the chief executive and the railway manager otherwise agree.

(6) In this section—

“**chief executive for chapter 6**” means the chief executive of the department that deals with the administration of chapter 6.

250 Altering road levels

(1) In constructing or managing a railway, the railway manager for the railway may alter the level of a road or require the authority responsible for the road to alter its level.

(2) Unless the railway manager and the authority responsible for the road agree, the railway manager must pay all reasonable expenses incurred by the authority in altering the road level.

(3) A person whose land is directly affected by the alteration is entitled to be paid compensation by the railway manager.

(4) The amount of compensation is—

- (a) the amount agreed between the parties; or
- (b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

(5) However, the amount of compensation can not be more than the amount that would have been awarded if the land had been acquired.

251 Maintaining roads crossing railways

- (1) A railway manager for a railway must maintain—
- (a) the part of the railway on a road; and
 - (b) the surface of a road, in a character in keeping with the road—
 - (i) between the rails; and
 - (ii) outside the outermost rails to a distance of 0.6 m.

(2) If a railway is built by way of a bridge or other structure over or under a road, the authority that maintained the road before the railway was built must continue to maintain the road under or over the bridge or structure.

252 No presumption of dedication of roads

If the public uses railway land as a road or otherwise for access purposes, the land is not taken to have been dedicated for use as a road even though the use is authorised or allowed by the railway manager.

253 Extending roads through or over rail corridor land

(1) The chief executive may allow a local government to construct, maintain and operate a road on rail corridor land by way of—

- (a) a bridge or other structure over a railway; or
- (b) a bridge or other structure that allows the road to pass under the railway; or
- (c) a level crossing.

(2) The permission may be subject to conditions.

(3) Before deciding a request for the permission, the chief executive must consult with the railway manager for the land.

(4) The railway manager may continue to use the land, and the airspace above the land, other than any land and airspace excluded by a condition of the permission.

(5) The chief executive and the railway manager and their agents or employees, do not have any duty or liability for the road or its use or operation.

(6) Once the road is used, it is taken to be—

- (a) a road under the relevant local government's control; and
- (b) a road under any Act about the use of vehicles on a road.

(7) Unless the chief executive and the local government otherwise agree—

- (a) the local government is responsible for maintaining the road and the bridge or level crossing; and
- (b) if the road stops being used—the local government is responsible for the cost of taking the bridge or level crossing away and of restoring the railway.

(8) The State is taken not to be in breach of any of its obligations in a sublease of the rail corridor land between the State and the railway manager by—

- (a) giving the permission; or
- (b) anything done by the local government under the permission.

254 Level crossings

(1) Pedestrians and drivers of vehicles must give way to—

- (a) a railway operator's rolling stock on railway tracks at a level crossing; and
- (b) a railway manager's rail vehicle on railway tracks at a level crossing.

(2) If an accident happens at a level crossing because a person does not comply with subsection (1)—

- (a) the railway manager or operator is not liable for any injury or damage caused in the accident; and
- (b) the person must pay the railway manager or operator the cost of any damage caused to property of the manager or operator.

(3) However, subsection (2) does not apply if the manager or operator, or its agents or employees, were negligent in relation to the accident.

255 Interfering with railway

(1) A person must not interfere with a railway unless—

- (a) the person has the railway's manager written approval; or

- (b) the interference is permitted or authorised under section 253 or a railway provision.

Maximum penalty—160 penalty units.

- (2) An approval may be subject to a reasonable condition.
 (3) The person must comply with the condition.

Maximum penalty—40 penalty units.

- (4) Subsection (1) does not apply to a person who carries out urgent maintenance of a railway.
 (5) This section binds all persons, including the State, the Commonwealth and the other States.

256 Rectifying unauthorised interference

(1) If a person contravenes section 255(1) by interfering with a railway, the railway manager for the railway may, by written notice, require the person to rectify the interference within a stated reasonable time.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) If the person does not comply with the requirement, the railway manager may rectify the interference.

- (4) The person must pay the manager the manager's costs of—
 (a) rectifying the interference; or
 (b) altering the construction, maintenance or operation of the railway because of the interference.

(5) In this section—

“rectify the interference” means—

- (a) alter, dismantle or take away any works; or
 (b) fix any damage caused by the interference.

257 Trespassing on railway

A person must not wilfully trespass on a railway.

Maximum penalty—40 penalty units.

258 Impact of certain decisions by local governments on railways

(1) The chief executive may make guidelines about what a local government must consider in relation to the safety and operational integrity of a railway if—

- (a) it intends to—
 - (i) approve a subdivision, rezoning or development of land; or
 - (ii) carry out road works on a local government road; or
 - (iii) make changes to the management of a local government road; and
- (b) the approval, works or change would—
 - (i) require works to be carried out on a railway; or
 - (ii) otherwise have a significant adverse impact on a railway; or
 - (iii) have a significant impact on the planning of a railway or a future railway.

(2) The chief executive must give a copy of any guidelines to each relevant local government.

259 Fencing new railways

(1) A railway manager need not contribute to the fencing of any part of the boundary of land that is—

- (a) a future railway; or
- (b) acquired for a widening or deviation of a railway.

(2) Subsection (1) does not apply if—

- (a) the land acquired was substantially fenced; and
- (b) the railway's presence may make the fencing ineffective.

260 Works for existing railways

(1) This section applies—

- (a) while a railway existing at the commencement (the “**existing railway**”) continues to be operated as a railway; and
- (b) to the owners and occupiers of land next to the existing railway (the “**neighbouring land**”).

(2) Queensland Rail must, within a reasonable time, construct and maintain—

- (a) works that are necessary to make good any interruptions caused by the existing railway to the use of the neighbouring land; and
- (b) works that are necessary to—
 - (i) separate the existing railway from the neighbouring land; and
 - (ii) protect the stock straying from the neighbouring land onto the railway; and
- (c) sufficient works to ensure the neighbouring land's drainage is as good, or nearly as good, as it was before the existing railway was constructed.

(3) Queensland Rail may satisfy its obligation under subsection (2)(b) by constructing and maintaining a fence of substantially similar quality to any fence around the neighbouring land when the railway was constructed.

(4) This section does not require Queensland Rail to—

- (a) construct or maintain works in a way that would prevent or obstruct the use of the existing railway; or
- (b) construct or maintain works for owners or occupiers who agreed to receive, and have been paid, compensation in place of the works.

(5) The Land Court must decide any dispute about the adequacy of works or maintenance under this section.

(6) If the owner or occupier of neighbouring land considers that works carried out under this section are insufficient for the convenient use of the land, the owner or occupier may, with Queensland Rail's agreement, carry out further works at the owner's or occupier's expense.

(7) Queensland Rail may, by written notice given to the owner or occupier, require the further works to be carried out—

- (a) under the supervision of a person nominated by Queensland Rail; and
- (b) according to plans and specifications approved by Queensland Rail.

(8) Queensland Rail must attempt to keep the cost of the further works to a reasonable level.

(9) Until Queensland Rail carries out the works mentioned in subsection (2), the owner or occupier of the neighbouring land, and their employees and agents, may cross the existing railway next to the land with vehicles and livestock.

(10) The crossing must be made directly, and in a way that is safe and does not damage or obstruct the railway.

(11) However, subsection (9) does not apply to an owner or occupier who agreed to receive, and has been paid, compensation in place of the works.

(12) A person must shut and lock a gate set up under this section at either side of an existing railway as soon as the person, and any vehicles or livestock in the person's care, have passed through the gate.

Maximum penalty for subsection (12)—10 penalty units.

260A Transfer of obligations for existing railway to new railway manager

(1) This section applies if—

- (a) Queensland Rail has obligations under section 260 in relation to a railway that it leases; and
- (b) Queensland Rail surrenders the lease of the railway; and
- (c) the railway is leased to another railway manager; and
- (d) the other railway manager operates the railway as a railway.

(2) After the railway is leased to the other railway manager, the other railway manager must satisfy Queensland Rail's obligations under section 260.

(3) However, Queensland Rail continues to be responsible for any obligations that arose before the lease of the railway was surrendered.

261 Non-accredited railways

(1) A non-accredited railway may be connected, either directly or through another non-accredited railway, to the railway of an accredited railway manager with the manager's written agreement.

(2) Unless the parties otherwise agree, the manager is not liable for any injury, loss or damage arising from an act done, or omission made, honestly and without negligence, on the non-accredited railway.

(3) Subject to any agreement between the manager and the non-accredited railway manager, the manager may—

- (a) disconnect the non-accredited railway from the railway; or
- (b) close the connection between the non-accredited railway and the railway.

(4) Before taking action under subsection (3), the manager must—

- (a) give at least 3 months notice of the proposed action; or
- (b) get the written agreement of the non-accredited railway manager to the proposed action.

(5) For the disconnection, the manager may, by written notice, require the non-accredited railway manager to take away any part of the railway on land managed by the manager.

(6) If the non-accredited railway manager does not take it away within a reasonable time, the manager may take it away and recover the costs from the non-accredited manager.

(7) If the manager maintains the non-accredited railway the manager may exercise its powers under a railway provision in relation to the non-accredited railway.

(8) A person must not construct a non-accredited railway on a watercourse without the chief executive's written approval.

(9) If a railway operator operates rolling stock over a non-accredited railway, the railway operator may exercise its powers under a railway provision in relation to the non-accredited railway.

(10) In this section—

“non-accredited railway” means a railway managed by a non-accredited railway manager.

“non-accredited railway manager” means a person who is not required to be accredited for a railway because of section 123(3).³⁷

37 Section 123 (Accreditation of managers and operators)

262 Application of Land Act 1994

The following sections of the *Land Act 1994* do not apply to a lease of existing rail corridor land, new rail corridor land or non-rail corridor land—

- section 157 (Expiry of lease)
- section 183 (Rent payable generally)
- section 204 (Survey condition)
- section 211 (Conditions must be reviewed)
- section 336(2)(a) and (c).³⁸

263 Limitation of liability for chief executive and rail safety officers

(1) The chief executive and each rail safety officer is not civilly liable for an act or omission done honestly and without negligence under a railway provision.

(2) If subsection (1) prevents a civil liability attaching to a person, the liability instead attaches to—

- (a) for a rail safety officer who is an employee of an accredited person for a railway, to the extent the officer's act or omission arose because of the exercise or purported exercise of a power under part 6³⁹ involving an incident on or involving the railway—the accredited person; or
- (b) in any other case—the State.

264 Helping in accidents or emergencies

(1) This section applies if a person—

- (a) helps, or attempts to help, in a situation in which an accident or emergency involving a railway happens or is likely to happen; and
- (b) the help, or attempt to help, is given—
 - (i) honestly and without negligence; and
 - (ii) without any fee, charge or other reward.

³⁸ *Land Act 1994*, section 336 (Amending a sublease)

³⁹ Part 6 (Railway incidents)

(2) The person does not incur civil liability for helping or attempting to help.

(3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.

(4) This section does not apply to—

- (a) a person whose act or omission wholly or partly caused the accident, emergency or likely accident or emergency; or
- (b) a rail safety officer.

265 Delayed passenger services

(1) A railway manager must endeavour to bring a passenger service that is delayed back to its scheduled running time.

(2) In complying with subsection (1), a railway manager must not distinguish between different types of regularly scheduled passenger services.

(3) Subsection (2) does not limit the matters that the railway manager may consider as relevant when complying with subsection (1).

Examples of relevant matter—

1. A train transporting livestock.
2. Train service entitlements for services other than passenger services.

266 Priority for regularly scheduled passenger services in allocating train paths

(1) The chief executive may establish a process that regularly allows the chief executive to identify passenger service requirements.

(2) For the process established under subsection (1), the chief executive may, by written notice to a railway manager, require the railway manager to give to the chief executive information about—

- (a) the total number of train paths that is possible for a specific section of railway track having regard to the railway manager's maintenance requirements; and
- (b) the existing train paths that are the subject of agreements with railway operators for access to that specific section of railway track; and

- (c) the usage of the existing train paths on that specific section of railway track.

(3) After identifying passenger service requirements, the chief executive may give written notice to each accredited person about the passenger service requirements relevant to the railway manager's railway.

(4) A railway manager given a notice under subsection (3) must, whenever a train path is available for the railway manager to allocate, provide for priority to be given to the passenger service requirements as stated in the notice.

(5) In complying with subsection (4), a railway manager must not distinguish between different types of regularly scheduled passenger services.

(6) In charging for access to regularly scheduled passenger services (an **“access charge”**), a railway manager must not—

- (a) differentiate between similar regularly scheduled passenger services operating or proposed to operate over the same route at different times of the day; or
- (b) set an access charge for a train path that is greater than the access charge set for similar train paths on the same route.

(7) In this section—

“available”, in relation to the allocation of a train path, includes—

- (a) a new train path available for allocation because of rearrangements of train operations or new or upgraded infrastructure; and
- (b) reallocating an existing train path.

“infrastructure” includes rail transport infrastructure and other rail infrastructure.

“passenger service requirements” means requirements for train paths for the following—

- (a) regularly scheduled passenger services on railway track in the State;
- (b) rolling stock that is to be used for a regularly scheduled passenger service and is being relocated for the purpose of providing the service.

CHAPTER 8—PORT INFRASTRUCTURE

PART 1—PRELIMINARY

267 Definitions for chapter

In this chapter—

“**charge**” means an amount charged by a port authority.

“**corporate plan**” means a corporate plan required by the *Government Owned Corporations Act 1993*.

“**extractive material**” means sand, gravel, boulders, clay, silt, mud or other material in or on land under tidal water, but does not include a mineral within the meaning of the *Mineral Resources Act 1989*.

“**land**” means any land, whether above or below the ordinary high water mark at spring tides.

“**ship**” has the same meaning as in the *Transport Operations (Marine Safety) Act 1994*.

“**statement of corporate intent**” means a statement of corporate intent required by the *Government Owned Corporations Act 1993*.

“**strategic port land**” means land that is strategic port land under section 286 (Approval of land use plans).

PART 2—CONTINUATION, ESTABLISHMENT AND ABOLITION OF PORT AUTHORITIES

268 Establishment of new port authority

(1) A regulation may establish a new port authority as a body corporate that has a seal and may sue and be sued in its corporate name.

(2) A regulation may also—

(a) specify the name of the port authority; or

- (b) specify the name of the port it is to manage; or
- (c) transfer assets and liabilities to the authority.

269 Port authority is excluded matter for Corporations Act

A port authority established under section 268 is declared to be an excluded matter for the Corporations Act, section 5F in relation to the following provisions of the Corporations Act—

- (a) parts 2D.1 and 2D.6;
- (b) chapters 2K and 2L;
- (c) parts 5.7, 5.7B, 5.9 and 5B.2.⁴⁰

270 Abolition of port authority

(1) A regulation may abolish a port authority and transfer its functions to another port authority, the State or a local government (the “**transferee**”).

(2) A regulation may also transfer to the transferee, or to a port authority, the State or a local government, assets and liabilities of the abolished port authority.

(3) A legal proceeding by or against the abolished port authority about the port, or transferred assets and liabilities, that is unfinished when the relevant regulation commences may be continued and finished by or against—

- (a) the transferee; or
- (b) if the assets or liabilities concerned are transferred to a person mentioned in subsection (2) who is not the transferee—the person.

40 Corporations Act, part 2D.1 (Duties and powers), part 2D.6 (Disqualification from managing corporations), chapter 2K (Charges), chapter 2L (Debentures), part 5.7 (Winding up bodies other than companies), part 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company), part 5.9 (Miscellaneous) and part 5B.2 (Registrable bodies)

271 Transfer of management of a port

(1) A regulation may transfer the management of a port from a port authority, the State or a local government (the “**transferor**”) to a port authority, the State or a local government (the “**transferee**”).

(2) A regulation may also transfer to the transferee, or to a port authority, the State or a local government, assets and liabilities of the transferor.

(3) A legal proceeding by or against the transferor about the port, or transferred assets or liabilities, that is unfinished when the relevant regulation commences may be continued and finished by or against—

- (a) the transferee; or
- (b) if the assets or liabilities concerned are transferred to a person mentioned in subsection (2) who is not the transferee—the person.

272 Regulation may make transitional arrangements

(1) If a port authority is established or abolished, or the management of a port is transferred, under this part, a regulation may make transitional arrangements about the establishment, abolition or transfer.

(2) The transitional arrangements may include—

- (a) arrangements for the transfer of staff, and their superannuation and other entitlements; or
- (c) other transitional arrangements necessary or convenient for the establishment, abolition or transfer.

273 Management of port by State or local government

If the State or a local government is given the management of a port under this chapter, the Minister or the local government has, for the port, all the functions and powers, and all the obligations, of a port authority under this chapter.

274 Regulation may define port limits etc.

A regulation may—

- (a) define or amend the limits of a port; or
- (b) give a name to a port or change the name of a port; or

- (c) for a new port—transfer the management of the port to an existing port authority, the State or a local government; or
- (d) change the name of a port authority.

PART 3—FUNCTIONS AND POWERS OF PORT AUTHORITIES

275 Functions of port authorities

(1) The functions of a port authority are—

- (a) to establish, manage, and operate effective and efficient port facilities and services in its port; and
- (b) to make land available for—
 - (i) the establishment, management and operation of effective and efficient port facilities and services in its port by other persons; or
 - (ii) other purposes consistent with the operation of its port; and
- (c) to provide or arrange for the provision of ancillary services or works necessary or convenient for the effective and efficient operation of its port; and
- (d) to keep appropriate levels of safety and security in the provision and operation of the facilities and services; and
- (e) to provide other services incidental to the performance of its other functions or likely to enhance the usage of the port; and
- (f) for the Cairns Port Authority, to provide or arrange for the development and use of its strategic port land for residential and tourist accommodation; and
- (g) to perform any other functions conferred on it under this or another Act or under the regulations.

(2) A port authority's functions as provided under subsection (1) may be removed, restricted or limited by regulation.

276 Port services function

(1) A port authority has, in addition to its functions under section 275, the function of providing port services and ancillary services—

- (a) whether in or outside its port; and
- (b) whether in or outside Australia; and
- (c) whether for another port authority or for someone else.

(2) A port authority that is a GOC is taken to have had the function mentioned in subsection (1) from when it became a GOC.

(3) In this section—

“**ancillary services**” means services ancillary to the provision of port services, including services appropriate for complementing or enhancing the provision of port services.

“**port**” includes airport.

“**port services**” means any of the following—

- (a) services relating to the establishment, operation or administration of ports;
- (b) dredging services;
- (c) services relating to the reclamation of land;
- (d) consultancy services about any of the services mentioned in paragraphs (a) to (c).

277 Powers of port authorities subject to Marine Safety Act

The powers of a port authority under this chapter, including powers conferred by a regulation, must be exercised subject to the powers of a harbour master under the *Transport Operations (Marine Safety) Act 1994* about marine safety and navigation.

278 Powers of port authorities

(1) In addition to the powers a port authority has because of this chapter or the *Government Owned Corporations Act 1993*, each port authority has all powers necessary or convenient for performing its functions.

(2) Without limiting subsection (1), a port authority’s powers include power—

- (a) to dredge and otherwise maintain or improve navigational channels in its port; and
 - (b) to reduce or remove a shoal, bank or accumulation in its port that, in the port authority's opinion, impedes navigation in its port.
- (3) A port authority is not liable to pay royalties or similar charges for extractive material removed—
- (a) to maintain or improve navigational channels in its port, or improve navigation in its port, if the material is disposed of—
 - (i) in an area associated with port activities and approved by the Minister; and
 - (ii) under relevant statutory environmental controls; or
 - (b) to reclaim land that is, or is proposed to be, strategic port land.

279 Additional powers

(1) A regulation may—

- (a) allow a port authority to control, whether by using notices, markings, fences, barriers, directions or otherwise—
 - (i) access to or the use of its strategic port land or port facilities, or access to or the use of areas in its port where activities may affect the port's operation; or
 - (ii) the movement or mooring of ships at its port facilities, or the movement or mooring of ships in its port if the movement or mooring may affect the port's operation; or
 - (iii) the movement of passengers to or from ships or aircraft using its port facilities or on its port facilities or strategic port land; or
 - (iv) the movement, handling or storage of goods loaded, unloaded or transhipped to or from ships or aircraft using its port facilities or on its port facilities or strategic port land; or
 - (v) the movement, stopping or parking of vehicles, aircraft or trains on its strategic port land or at its port facilities; or
 - (vi) other activities and conduct in its port, on its strategic port land or at its port facilities; or

- (b) allow a port authority to detain, using any necessary and reasonable force, ships, aircraft, goods or vehicles for which the authority's charges are payable until the charges are paid, or to sell the ships, aircraft, goods or vehicles if the charges are not paid; or
 - (c) allow a port authority to require a person to produce documents relevant to the authority's charges, and allow the authority to inspect and make copies of them; or
 - (d) allow a port authority to remove ships, aircraft, vehicles, trains, goods or other property that are—
 - (i) abandoned in its port, on its strategic port land or at its port facilities; or
 - (ii) moored, parked or left against the authority's directions; or
 - (e) allow a port authority to sell or otherwise dispose of ships, aircraft, vehicles, goods or other property abandoned in its port, on its strategic port land or at its port facilities; or
 - (f) allow a port authority to recover from a prescribed person the costs of doing the actions mentioned in paragraphs (b), (d) and (e); or
 - (g) allow a port authority to enter and inspect ships or inspect aircraft, goods or vehicles on its strategic port land, at its port facilities, or in an area in its port where activities may affect the port's operation, to ensure compliance with this chapter and, if necessary, enter by passing through land or over facilities under someone else's control; or
 - (h) provide that a breach of a notice mentioned in paragraph (a) is an offence; or
 - (i) allow the appointment of authorised officers and provide for their functions and powers, including power to take persons to police officers; or
 - (j) confer any other powers on a port authority, including, for example, powers similar to those mentioned in this section.
- (2) A regulation under subsection (1) for a port authority applies—
- (a) in the area mentioned in the relevant paragraph or subparagraph of subsection (1); or
 - (b) if no area is mentioned—in its port and its strategic port land;

but does not apply outside its port and strategic port land.

(3) After consulting with a port authority, the Minister may direct the authority to perform a function or exercise a power under this section only for a specified area of its port or specified strategic port land or port facilities.

(4) A regulation under this section may create offences and prescribe penalties for the offences of not more than 100 penalty units.

(5) In this section—

“**port facilities**” of a port authority means port facilities owned or controlled by it.

280 Power to impose charges

(1) A port authority may impose charges for the use of its port or for the State.

(2) Charges may, for example, be imposed by reference to—

- (a) ships or aircraft using its port; and
- (b) goods or passengers loaded, unloaded or transhipped to or from ships or aircraft using port facilities in its port, whether or not the facilities are owned or controlled by it.

(3) This section does not limit the powers a port authority has apart from this section.

281 Copies of additional functions or powers to be available

If functions or powers are conferred on a port authority by a regulation under section 275 (Functions of port authorities) or section 279 (Additional powers), it must ensure that copies of a document specifying details of the functions or powers, and the area where the functions or powers may be exercised or performed, are available for inspection and purchase (at reasonable cost) during business hours at its offices in the locality to which the functions or powers relate.

282 Liability for charges

A regulation may prescribe the persons who are liable for charges of a port authority.

283 Liability for damage

A regulation may prescribe the persons who are liable for damage to the works or infrastructure of a port authority.

PART 4—LAND MANAGEMENT*Division 1—Strategic port land***284 Land use plans**

(1) Each port authority must, from time to time, prepare a land use plan for approval under section 286 (Approval of land use plans).

(2) After discussing the matter with a port authority, the Minister may direct it to prepare a land use plan or an amendment of a land use plan for approval under section 286.

(3) A port authority's land use plan must specify details of—

- (a) the authority's strategic port land; and
- (b) land the authority wishes to become strategic port land; and
- (c) the current and proposed uses of the land.

285 Consultation on land use plans

(1) If a port authority considers that land to which it holds title or that it holds directly from the State is or may be needed—

- (a) for the operation of its port; or
- (b) for use by industries requiring port facilities or that would enhance the usage of the port; or
- (c) for integration between sea or air transport and another transport mode; or
- (d) for a buffer between land required for a purpose mentioned in paragraph (a), (b) or (c) and other land;

the authority may include details of the land, and the current and proposed uses of the land, in a proposed land use plan or an amendment of a land use plan.

(2) The port authority must—

- (a) take reasonable steps to engage in public consultation about the proposed land use plan or amendment; and
- (b) consult with each local government in whose area land included in the plan or amendment is situated.

(3) However, consultation is not required—

- (a) for an amendment to remove land from the land use plan; or
- (b) for land that already is strategic port land whose use is not to change.

(4) After discussing the matter with the port authority, the Minister may return the proposed land use plan or amendment for amendment in the way directed by the Minister.

(5) A copy of the direction must be published in the gazette within 21 days after it is given.

286 Approval of land use plans

(1) The Minister may approve a proposed land use plan, or an amendment of a land use plan, if satisfied that—

- (a) the land included in the plan or amendment is or may be needed for a use mentioned in section 285(1) (Consultation on land use plans); and
- (b) the port authority has taken appropriate account of issues raised by the public consultation; and
- (c) no local government in whose area the land is situated has a substantial objection to the proposed plan or amendment.

(2) If the Minister is satisfied that any of the local governments has a substantial objection, the Governor in Council may approve the proposed land use plan or amendment if satisfied that, on balance, the approval should be given.

(3) Approval of a land use plan, or an amendment of a land use plan, must be notified in the gazette within 21 days after it is given.

(4) The approval takes effect when it is notified in the gazette.

(5) Land included in a port authority's current approved land use plan is its strategic port land.

287 Strategic port land not subject to planning schemes

(1) Strategic port land is not subject to a planning scheme.

(2) Subsection (1) has effect despite the *Integrated Planning Act 1997*, section 2.1.2.⁴¹

Division 2—General

288 Restrictions on dealing in property

(1) A port authority must not, without the Minister's written approval—

- (a) dispose of freehold land; or
- (b) enter into a lease, licence or another form of tenure of its strategic port land, or its port facilities, for longer than 25 years (including any renewal option).

(2) An approval may be subject to conditions.

(3) A purported dealing in land or port facilities contrary to this section has no effect.

289 Port marine operational area

In an Act, a reference to the marine operational area of a port is a reference to an area of land that is—

- (a) within the limits of the port; and
- (b) below the ordinary high water mark at spring tides; and
- (c) at least 1 of the following—
 - (i) in, or within 200 m of, marked shipping channels and recognised entry and exit shipping corridors;

41 *Integrated Planning Act 1997*, section 2.1.2 (Area to which planning schemes apply)

- (ii) in, or within 100 m of, swing basins, commercial shipping wharves, moorings, anchorages and spoil grounds;
- (iii) declared under a regulation to be a marine operational area for the port.

PART 5—GENERAL

290 Protection from liability

(1) In this section—

“**official**” means a director of the board of a port authority, an employee of a port authority or a person acting for a port authority.

(2) A regulation may provide that an official is not civilly liable for an act or omission done honestly and without negligence for a port authority.

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the port authority.

(4) This section is in addition to, and does not limit, the following sections of the *Government Owned Corporations Act 1993*—

- section 138 (Statutory GOC not to indemnify officers)
- section 139 (Statutory GOC not to pay premiums for certain liabilities of officers).

291 Carrying on port activities outside port limits

(1) The Governor in Council may decide that port activities of a substantial nature may be carried on at a place that is not a port managed by a port authority, the State or a local government.

(2) In this section—

“**port**” does not include an airport.

292 Offences

(1) A person must not intentionally or recklessly—

- (a) damage a port authority’s works or infrastructure; or

- (b) interfere with or disrupt a port's operations; or
- (c) dump refuse or goods at a port or into the waters of a port.

Maximum penalty—200 penalty units.

(2) A person must not intentionally or recklessly evade the payment of a port authority's charges.

Maximum penalty—200 penalty units.

(3) A person must not carry on port activities of a substantial nature at a place unless the place is in a port or a place where a decision under section 291 (Carrying on port activities outside port limits) applies.

Maximum penalty—200 penalty units.

(4) In subsection (3)—

“**port**” does not include an airport.

293 Payment of charges and interest on unpaid charges

(1) Charges of a port authority are payable within the time decided by the authority.

(2) If charges of a port authority remain unpaid after the day when they are required to be paid, the authority may charge interest on the amount unpaid at the rate decided by the authority.

(3) A regulation may provide for exemptions from charges of a port authority, but this section does not affect the power of a port authority to exempt or partially exempt a person from charges of the authority.

294 Transitional provisions applying in relation to port authorities that are candidate GOCs

(1) This section applies in relation to a port authority that is a candidate GOC.

(2) A regulation may prescribe matters about the administration and operation of the port authority, including, for example, matters about—

- (a) the port authority's board, chief executive officer and senior management; and
- (b) the port authority's powers; and
- (c) the port authority's employees; and

- (d) the port authority's superannuation schemes; and
- (e) dealings with the port authority.

(3) Without limiting subsection (2), a regulation under the subsection may make provision to the same or similar effect as the following provisions of the *Government Owned Corporations Act 1993*—

- chapter 3 (Government Owned Corporations (GOCs))
 - part 5 (Board of directors), division 1 (Statutory GOCs)
 - part 6 (Chief executive officer), division 1 (Statutory GOCs)
 - part 10 (General reserve powers of shareholding Ministers)
 - part 12 (Duties and liabilities of directors and other officers), divisions 1 (Statutory GOCs) and 3 (GOCs generally)
 - part 13 (Legal capacity and powers), division 1 (Statutory GOCs)
 - part 16 (Employees), divisions 2 (Statutory GOCs) and 4 (GOCs generally)
- schedule 1 (Additional provisions relating to board of statutory GOC)
- schedule 2 (Additional provisions relating to chief executive officer of statutory GOC).

(4) Subsections (2) and (3) are in addition to, and do not limit, section 290 (Protection from liability).

(5) A regulation under this section may create offences and prescribe penalties for the offences of not more than 100 penalty units.

(6) A regulation may prescribe transitional provisions about the port authority and an entity to which its assets and liabilities are to be transferred by a regulation under the *Government Owned Corporations Act 1993*.

(7) The port authority is a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982*.

(8) This section ceases to apply to the port authority when its assets and liabilities are transferred to an entity by regulation under the *Government Owned Corporations Act 1993* or 18 months after it first applied to the authority.

295 Notices at entrances**(1) If—**

- (a) a port authority erects or displays a notice at each entrance commonly used by persons to gain access to its port; and
- (b) the notice contains information about the port; and
- (c) in a case where use of its port or facilities gives rise to a liability for charges—the notice states this and indicates generally the nature of the charges; and
- (d) in a case where a contravention of a requirement of the notice is an offence—the notice states this and indicates generally the penalties that apply; and
- (e) a person gains access to the port by using another entrance;

the person is taken to be aware of the information.

(2) If—

- (a) a port authority erects or displays a notice at each entrance commonly used by persons to gain access to its strategic port land; and
- (b) the notice contains information about the strategic port land; and
- (c) in a case where use of its strategic port land or facilities gives rise to a liability for charges—the notice states this and indicates generally the nature of the charges; and
- (d) in a case where a contravention of a requirement of the notice is an offence—the notice states this and indicates generally the penalties that apply; and
- (e) a person gains access to the strategic port land by using another entrance;

the person is taken to be aware of the information.

CHAPTER 9—BUSWAYS AND BUSWAY TRANSPORT INFRASTRUCTURE

PART 1—PRELIMINARY

296 Ways of achieving busway objectives

The objectives of this Act for busways are intended to be achieved by—

- (a) developing and putting into effect busway transport infrastructure strategies; and
- (b) establishing a legal framework to allow the construction, maintenance, management and operation of busway transport infrastructure in an effective and efficient way.

PART 2—CHIEF EXECUTIVE’S FUNCTIONS AND POWERS

297 Functions

The chief executive has the following functions in relation to busways, including proposed busways, and busway transport infrastructure, including proposed busway transport infrastructure—

- (a) investigating, planning, establishing, maintaining, managing or operating, or arranging for someone else to investigate, plan, establish, maintain, manage or operate;
- (b) providing or arranging for associated services or works necessary or convenient for effective and efficient construction, management and operation;
- (c) efficiently integrating with any transport infrastructure, including light rail transport infrastructure;
- (d) providing for appropriate levels of safety in construction, management and operation;
- (e) doing other things that directly or indirectly—

- (i) are likely to enhance the provision of busway transport infrastructure and passenger services on busways; or
- (ii) are incidental or complementary to the performance of another function.

298 Authority to enter or temporarily occupy or use land

(1) For the performance of a function under this chapter, the chief executive, or someone authorised in writing by the chief executive, may—

- (a) do 1 or more of the following in relation to land—
 - (i) enter the land, whether or not for temporarily occupying or using the land;
 - (ii) temporarily occupy the land;
 - (iii) temporarily use the land; and
- (b) do anything on the land necessary or convenient for the function, including, for example, for busway transport infrastructure works.

(2) However, the chief executive must not authorise a person to enter land under this section if the entry is a type of entry able to be authorised under an investigator's authority under chapter 11.

299 When land may be entered, occupied or used

(1) This section applies if a person proposes to enter, occupy or use land under this part.

(2) The person may enter, occupy or use the land without the permission of, or notice to, the owner or occupier of the land to perform urgent remedial work to facilitate or maintain the operation of busway transport infrastructure.

(3) However, the person must, if practicable, notify the occupier orally or in writing before entering the land.

(4) If the entry, occupation or use is other than for the performance of urgent remedial work, the person may enter, occupy or use the land if the person—

- (a) obtains the written permission of—
 - (i) each person who is an owner of the land; and

- (ii) each person who is an occupier of the land; or
 - (b) gives at least 7 days written notice to the occupier before the entry, occupation or use.
- (5)** The notice under subsection (4)(b) must state—
- (a) all works proposed to be performed; and
 - (b) all uses proposed to be made of the land; and
 - (c) details of anything else proposed to be done on the land; and
 - (d) the approximate period when occupation or use is expected to continue; and
 - (e) an owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use.

(6) A notice may be given under this section even though it is proposed to resume the land for busway transport infrastructure.

(7) Power to enter, occupy or use land under this part does not authorise entry, occupation or use of a structure on the land used solely for residential purposes without the permission of the occupier of the land.

300 Compensation

(1) This section applies if land is entered, occupied or used under this part.

(2) An owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use, including by the taking or consumption of materials.

(3) However, compensation is payable only if written notice of the claim or proposed claim is given to the chief executive—

- (a) after the loss or damage happens, but within 1 year after the entry, occupation or use ends; or
- (b) at a later time allowed by the chief executive.

(4) In the absence of agreement between the owner or occupier and the chief executive about the payment of compensation, payment of compensation may be claimed and ordered in a proceeding brought in the Land Court.

(5) The Land Court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(6) Compensation paid under this section for loss or damage caused to land must not be more than the compensation that would have been awarded if the land had been acquired.

PART 3—ESTABLISHMENT OF BUSWAYS

301 Definition for pt 3

In this part—

“road” means a road under the *Land Act 1994*, but does not include a State-controlled road.

302 Declaration of land as busway land

(1) The Minister may, by gazette notice, declare land to be busway land.

(2) Land declared to be busway land—

(a) must be—

(i) identified specifically in the gazette notice; or

(ii) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available for perusal at an office of the department mentioned in the gazette notice; and

(b) must consist only of land for a busway and necessary busway transport infrastructure.

(3) The identification of land declared to be busway land may, but need not, be by reference to strata occupied by the land.

(4) Land may be declared to be busway land only if it is—

(a) land acquired by the State or the chief executive for busway purposes, including for busway transport infrastructure; or

(b) a road.

303 Effect on land of busway declaration

(1) If a road or a part of a road is declared under this part to be busway land, the road or part—

- (a) stops being a road; and
- (b) becomes unallocated State land.

(2) If a lot or a part of a lot under the *Land Title Act 1994* is declared under this part to be busway land, the lot or part becomes unallocated State land.

(3) Busway land can not be declared under section 24 to be a State-controlled road.

(4) The Governor in Council must lease busway land that is unallocated State land to the State under the *Land Act 1994*, section 17.⁴²

(5) The lease is in perpetuity and, if demanded, for a rent of \$1 a year.

304 Development of busway and busway transport infrastructure

(1) This section applies to the establishment of a busway, including any investigating, planning, maintaining, managing, operating, and arranging for the busway or for busway transport infrastructure for the busway.

(2) Nothing in this chapter is intended to affect the operation of the *Integrated Planning Act 1997* to the extent that the establishment of the busway is development under that Act.

42 *Land Act 1994*, section 17 (Granting land to the State)

PART 4—MANAGEMENT OF BUSWAY LAND AND BUSWAY TRANSPORT INFRASTRUCTURE

Division 1—Transport infrastructure interaction

305 Altering road levels by a local government

(1) The chief executive may require a local government having control of a road to alter the level of the road for—

- (a) busway transport infrastructure works; or
- (b) the management or operation of a busway.

(2) However, the chief executive—

- (a) must consult with the local government about the nature and extent of the alteration of the level of the road before the alteration is started; and
- (b) subject to an agreement between the chief executive and the local government arising out of the consultation, pay all reasonable costs incurred by the local government in altering the road level.

(3) The local government must comply with the chief executive's requirement.

306 Watercourses and busway transport infrastructure works

(1) To carry out busway transport infrastructure works, the chief executive may—

- (a) divert a watercourse; or
- (b) construct a watercourse, whether temporary or permanent.

(2) In taking action under subsection (1)(a), the chief executive must consider the effect that the action will have on the physical integrity and flow characteristics of the watercourse.

307 Permitted construction by local government of roads over or under busway land

(1) Despite section 303(1), the chief executive may permit a local government to construct, maintain and operate a road located on busway land, consisting of—

- (a) a bridge or other structure allowing traffic to pass over the level at which buses use the busway land; or
- (b) a structure allowing traffic to pass under the level at which buses use the busway land.

(2) The permission may be given on reasonable conditions.

(3) In deciding whether to give the permission, the chief executive must consider the limiting effect the use of the road is likely to have on the use of the busway land for busway passenger services.

(4) While the bridge or other structure is being used for the road—

- (a) neither the chief executive nor any person the chief executive has permitted to operate a bus using the busway land has any duty or liability for the road or its use or operation; and
- (b) the road is taken to be a road of which the local government has control under the *Local Government Act 1993*, section 901(1); and
- (c) the road is taken to be a road under any Act about the use of vehicles on a road.

(5) Unless the chief executive and the local government otherwise agree—

- (a) the local government is responsible for maintaining the road and the bridge or other structure; and
- (b) if the bridge or other structure stops being used for the road, the local government is responsible for the cost of taking the bridge or other structure away and of restoring the busway land.

308 Powers of chief executive for busway transport infrastructure works contracts etc.

(1) The chief executive may, for the State, carry out or enter into contracts with other persons for the carrying out of—

Transport Infrastructure Act 1994

- (a) busway transport infrastructure works on a busway or on land that is intended to become a busway; or
- (b) other works that contribute to the effectiveness and efficiency of the busway network; or
- (c) the operation of a busway.

(2) The chief executive, for the State, may enter into contracts with other persons for busway transport infrastructure works to be carried out outside the State under an agreement between the State and the other State concerned.

(3) A contract with a local government under this section may include arrangements about which powers of the local government are to be exercised by the chief executive, and which are to be exercised by the local government, for the busway.

(4) A local government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the local government's area.

(5) The chief executive, for the State, may carry out or enter into contracts for works on or adjacent to a busway at the request of the owner of adjacent land on the basis that the owner provides consideration, whether monetary or otherwise, as agreed between the chief executive and the owner.

(6) This section does not prevent the chief executive carrying out, or entering into contracts for the carrying out, of busway transport infrastructure works of a minor or emergency nature.

(7) In carrying out works or the operation of a busway, the chief executive must ensure that the carrying out is done on a price competitive basis.

(8) In entering into contracts under this section, the chief executive must ensure that open competition is encouraged.

(9) Subsection (8) does not apply to a contract with a person if the person is the sole invitee and enters into a price performance contract with the chief executive.

(10) The chief executive may arrange with another person for the sharing by the chief executive with the other person of the cost of—

- (a) acquisition of land for busway transport infrastructure; or
- (b) busway transport infrastructure works on a busway; or

- (c) other works that contribute to the effectiveness and efficiency of the busway network; or
- (d) the operation of a busway;

including all necessary preliminary costs associated with the acquisition, works or operation.

309 Distraction of traffic on busway

(1) A local government must obtain the chief executive's written approval if it intends to approve the erection, alteration or operation of an advertising sign or other advertising device that would be—

- (a) visible from a busway; and
- (b) reasonably likely to create a traffic hazard for the busway.

(2) For subsection (1), the chief executive may make guidelines to which local governments must have regard in deciding whether the chief executive's approval is required for a particular busway.

(3) An approval may be subject to conditions.

(4) Subsection (1) does not apply if the conditions applied by the local government to the erection, alteration or operation of the sign or device comply with permission criteria fixed by the chief executive.

(5) The permission criteria may include conditions.

(6) A local government must comply with conditions that apply to it under this section.

(7) An approval must be given—

- (a) within 21 days after receiving the application for approval; or
- (b) within a longer period notified to the local government by the chief executive within the 21 day period.

(8) If the chief executive does not respond to a local government's application within 21 days after receiving it, the chief executive is taken to have given approval at the end of the 21 days.

(9) The chief executive must publish a copy of each notice mentioned in subsection (10) in the gazette.

(10) In this section—

“**busway**” includes land that the chief executive has notified the local government in writing is intended to become a busway.

310 No presumption of dedication of road

(1) This section applies if the public uses busway land as a road, or for access purposes other than as a road.

(2) The busway land does not at law, either because the use is authorised or permitted by the chief executive or for another reason, become dedicated to public use as a road.

Division 2—Interfering with busway transport infrastructure

311 Interfering with busway transport infrastructure

(1) A person must not interfere with or carry out works on busway transport infrastructure unless—

- (a) the person has the written approval of the chief executive; or
- (b) the interference or works are for the construction, maintenance or operation of a road permitted under this part to be constructed, maintained and operated across, over or under the busway transport infrastructure; or
- (c) the interference or works are otherwise authorised under this Act or another Act.

Maximum penalty—160 penalty units.

(2) An approval under subsection (1)(a) may be given on reasonable conditions.

(3) The person given the approval must comply with the conditions of the approval.

Maximum penalty—40 penalty units.

(4) Subsection (1) does not apply to the carrying out of urgent maintenance of a busway or busway transport infrastructure.

312 Rectifying unauthorised interference or works

(1) This section applies if a person (the “**identified person**”) interferes with or carries out works on busway transport infrastructure in contravention of section 311(1).

(2) The chief executive may, by written notice given to the identified person, require the person to rectify the interference, or the effect of the carrying out of the works, within a stated reasonable time.

(3) The identified person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(4) If the identified person does not comply with the notice, the chief executive may rectify the interference or the effect of the carrying out of the works.

(5) The identified person must pay the amount of the chief executive’s reasonable costs of—

- (a) rectifying the interference or the effect of the carrying out of the works; or
- (b) changing the way the busway transport infrastructure is built, maintained or operated because of the interference or the effect of the carrying out of the works.

(6) The chief executive may recover the amount as a debt.

(7) In this section—

“**rectify the interference**” includes the following—

- (a) alter, dismantle or take away works;
- (b) fix damage caused by the interference.

*Division 3—Ancillary works and encroachments***313 Ancillary works and encroachments**

(1) The chief executive may construct, maintain, operate or conduct ancillary works and encroachments on a busway.

(2) The chief executive may, by gazette notice, decide that stated ancillary works and encroachments must not be constructed, maintained,

operated or conducted on busways, without the chief executive's written approval.

(3) A person must not construct, maintain, operate or conduct ancillary works and encroachments on a busway contrary to a notice under subsection (2).

Maximum penalty—200 penalty units.

(4) Subsection (3) does not apply to the construction, maintenance, operation or conduct of ancillary works and encroachments on a busway if the construction, maintenance, operation or conduct—

- (a) conforms to requirements specified by the chief executive by gazette notice; or
- (b) is done as required by a contract entered into with the chief executive.

(5) An approval or requirements may be subject to conditions, including conditions about the payment of fees and other charges, fixed by the chief executive.

314 Presumptions about advertising sign

(1) This section applies to a prosecution for an offence against section 313(3) in relation to an advertising sign.

(2) Each person whose product or service is advertised on the sign is taken to maintain the sign, unless the person proves the advertisement was placed without the person's knowledge or permission.

315 Alteration etc. of ancillary works and encroachments

(1) If ancillary works and encroachments are constructed, maintained, operated or conducted contrary to section 313,⁴³ the chief executive may—

- (a) cause them to be altered, relocated, made safe or removed; or
- (b) for activities—direct that their conduct be altered or that they stop being conducted.

(2) A person who constructed, maintained or operated ancillary works and encroachments contrary to section 313 is liable to pay to the chief

43 Section 313 (Ancillary works and encroachments)

executive the cost of altering or relocating them, making them safe or removing them.

(3) If ancillary works and encroachments are removed under subsection (1), the chief executive may cause them to be sold or destroyed.

(4) If the chief executive considers ancillary works and encroachments, or the use of ancillary works and encroachments, that were constructed, maintained, operated or conducted on a busway under an approval, requirements or contract under section 313—

- (a) by themselves or with other factors—
 - (i) are creating, or may create, a traffic hazard; or
 - (ii) are reducing, or may reduce, safety; or
 - (iii) are having, or may have, an adverse effect on traffic operations; or
- (b) require emergency action; or
- (c) have become, or may become, an obstacle to the carrying out of busway transport infrastructure works on the busway or to the construction, augmentation, alteration or maintenance of public utility plant on the busway;

the chief executive may cause them to be, or direct that they be, altered, relocated, made safe or removed or, for activities, direct that their conduct be altered or that they stop being conducted.

(5) A person must comply with a direction under subsection (4).

Maximum penalty—200 penalty units.

(6) If ancillary works and encroachments are altered, relocated, made safe or removed because of a direction under subsection (4), the chief executive may enter into an agreement with the owner of the ancillary works and encroachments for making a contribution towards the cost of the alteration, relocation, making safe or removal.

Division 4—Public utility plant

316 Definition for div 4

In this division—

“**busway land**” means busway land that, when declared under this chapter to be busway land, was a road or part of a road.

317 Retention of ownership of public utility plant

(1) This section applies if, immediately before the declaration of land as busway land public utility plant is located on the land.

(2) The declaration does not affect the ownership of the public utility plant.

318 Public utility plant on busway land

(1) A public utility provider may do the following things on busway land—

- (a) build, replace or take away, or alter, other than for maintenance or repair, its public utility plant;
- (b) maintain or repair, or alter, for maintenance or repair, its public utility plant;
- (c) take reasonable steps to stop obstruction or potential obstruction to, or interference or potential interference with, its public utility plant.

(2) However, the provider may do things mentioned in subsection (1) only if the chief executive agrees in writing.

(3) The chief executive must not unreasonably withhold agreement.

(4) Despite subsection (2), a public utility provider may, if acting in the interests of public safety, carry out urgent maintenance of its public utility plant on busway land without the written agreement of the chief executive, but only if the provider—

- (a) makes all reasonable attempts to obtain the chief executive’s oral agreement to the carrying out of the maintenance; and
- (b) whether or not the chief executive’s oral agreement is obtained, acts as quickly as possible to advise the chief executive of the details of the maintenance being carried out.

(5) Building or altering public utility plant under subsection (1)(a) does not affect the ownership of the plant.

319 Chief executive must give provider information

If asked in writing by a public utility provider, the chief executive must give the provider information about lines and levels for planned busway transport infrastructure on busway land necessary to enable the provider to minimise possible adverse affects of the establishment of the infrastructure on the provider's works.

320 Public utility provider to consult with chief executive before replacing public utility plant

(1) If a public utility provider proposes to replace the whole or a substantial proportion of its public utility plant on busway land, the provider must, before seeking written agreement under section 318, consult with the chief executive.

(2) The object of the consultation is to identify mutually beneficial arrangements for the replacement of the public utility plant, having regard to existing development plans for the busway land.

321 Public utility provider to comply with chief executive's agreement

(1) This section applies if, in relation to busway land, a public utility provider does something mentioned in section 318(1) (the “**relevant action**”)—

- (a) without the written or oral agreement of the chief executive required under section 318; or
- (b) in a way inconsistent with an agreement with the chief executive; or
- (c) in a way inconsistent with a regulation about how things mentioned in section 318(1) are to be done.

(2) The chief executive may, by written notice given to the public utility provider, require the provider, at the provider's cost, and within the time stated in the notice, to take action to remedy the relevant action.

(3) The time stated in the notice must be a time that is reasonable in the circumstances.

(4) If the provider does not comply with the notice, the chief executive may arrange for action the chief executive considers necessary to remedy the relevant action.

(5) The chief executive's reasonable expenses in arranging for the action to be carried out is a debt payable by the provider to the chief executive.

322 Chief executive may require public utility provider to alter position of public utility plant

(1) The chief executive may require a public utility provider to alter the position of the provider's public utility plant on busway land if the chief executive considers that the plant will interfere with the exercise of the chief executive's powers for the busway land.

(2) The chief executive is responsible only for the cost of altering the position of the public utility plant.

323 Information by public utility provider to chief executive

(1) If, in relation to public utility plant on busway land, a public utility provider does something mentioned in section 318(1), the provider must prepare records adequately defining the location of the plant.

(2) A public utility provider owning public utility plant located on busway land must, if asked by the chief executive, give the chief executive information adequately defining the location of the plant.

Maximum penalty for subsection (2)—40 penalty units.

324 Liability for damage caused by failure to comply with request for information

(1) This section applies if—

- (a) the chief executive causes damage to public utility plant located on busway land; and
- (b) before the damage was caused, the chief executive had asked for information under section 323(2) from the public utility provider owning the public utility plant; and
- (c) the provider had not, within a reasonable time, complied with the request; and
- (d) the damage was caused because of the failure to comply with the request.

(2) Unless the chief executive otherwise agrees, the chief executive is not liable for the damage.

325 Liability for damage caused by failure to give enough detail about location of public utility plant

(1) This section applies if—

- (a) the chief executive causes damage to public utility plant located on busway land; and
- (b) information supplied to the chief executive under section 323(2) did not define in enough detail the location of the plant; and
- (c) the damage was caused because of the failure to define in enough detail the location of the plant.

(2) Unless the chief executive otherwise agrees, the chief executive is not liable for the damage.

326 Liability for damage caused because of failure to comply with chief executive's requirements

(1) This section applies if—

- (a) the chief executive causes damage to public utility plant located on busway land; and
- (b) the damage is caused because the public utility provider owing the plant did something mentioned in section 318(1) in relation to the plant other than under the chief executive's requirements under this division.

(2) Unless the chief executive otherwise agrees, the chief executive is not liable for the damage.

327 Liability of public utility provider to pay additional expenses incurred by chief executive

(1) This section applies if the chief executive incurs additional expense in carrying out busway transport infrastructure works on busway land because a public utility provider—

- (a) did not supply within a reasonable time information asked for by the chief executive under section 323(2); or

- (b) in supplying information to the chief executive, did not define in enough detail the location of public utility plant; or
- (c) did something mentioned in section 318(1) in relation to public utility plant other than under the chief executive's requirements under this division.

(2) The public utility provider is liable to pay the chief executive the additional expense.

328 Replacement or reconstruction of public utility plant

(1) If the carrying out of busway transport infrastructure works on busway land by or for the chief executive requires taking away or replacing public utility plant, the chief executive can not be compelled to replace or reconstruct the plant in its previous location and form.

(2) If the plant is replaced or reconstructed—

- (a) it must be done under the chief executive's requirements; and
- (b) it must be at the chief executive's expense, but the cost to the chief executive of replacement or reconstruction may be reduced by agreement between the chief executive and the public utility provider owning the plant after taking into account—
 - (i) the remaining life of the plant; and
 - (ii) the salvage or scrap value of the plant; and
 - (iii) additional expense incurred because of inaccurate information supplied by the provider about the location of the plant; and
 - (iv) additional expense incurred because the plant was not constructed in accordance with the chief executive's requirements.

Division 5—Use of busway land

329 Trespass on busway land

(1) A person must not be on busway land if the person does not have the permission of the chief executive to be on the busway land.

Maximum penalty—40 penalty units.

(2) For subsection (1), permission may be given, for example—

- (a) expressly, by signs, structures, textured pavement or painted lines designating points for vehicles or pedestrians to cross the busway land; or
- (b) impliedly, by the absence of demarcation between ordinary road and the pavement of the busway land.

(3) A regulation may include rules about the use by the following of busway land—

- (a) buses operating on a busway established on the busway land;
- (b) persons having the permission of the chief executive to be on the busway land.

Division 6—Compensation entitlements

330 Definitions for div 6

In this division—

“access”, for land, means—

- (a) access to the land from the road network, whether or not through other land; or
- (b) access from the land to the road network, whether or not through other land.

“busway land” means busway land that, when declared under this chapter to be busway land, was a road or part of a road.

“establishment”, of busway transport infrastructure on busway land, includes the following—

- (a) initial construction of the busway transport infrastructure on the busway land;
- (b) construction for changing or adding to busway transport infrastructure previously constructed on the busway land;
- (c) putting in place the arrangements under which persons are permitted or not permitted to be on the busway land.

“interference”, with access, includes loss or reduction of access.

331 No entitlement to compensation for particular matters

(1) A person having an interest in land (the “**relevant land**”) has no entitlement at law, except to the extent this division provides, to compensation for a matter listed in subsection (2), to the extent the matter is caused by—

- (a) the establishment of a busway; or
- (b) the establishment or proposed establishment of busway transport infrastructure on busway land; or
- (c) the operation of a busway on busway land.

(2) The matters are—

- (a) the adverse affect on the amenity or likely amenity of the neighbourhood of the relevant land; and
- (b) interference with an activity of a business, commercial, industrial or residential nature carried out on the relevant land; and
- (c) loss or damage arising directly or indirectly from interference with access for the relevant land; and
- (d) the reduction or loss of a right of access for the relevant land and loss or damage caused by the reduction or loss of the right of access.

332 Compensation for reduced market value of interest in land

(1) A person who has an interest in land (the “**relevant land**”) is entitled to compensation if the establishment of busway transport infrastructure on busway land (the “**infrastructure**”), when completed, is a cause of interference (the “**interference**”) with access for the relevant land.

(2) Subsection (1) applies only if—

- (a) either of the following applies—
 - (i) the busway land joins directly with the relevant land or with land (“**access land**”) giving access for the relevant land because of an easement or other right or interest;
 - (ii) the busway land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the busway land by travelling only over road; and

- (b) the practical effect of the interference is substantially greater in nature and extent than the practical effect of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and
- (c) the practical effect of the interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the establishment of the infrastructure.

(3) The amount of the compensation is the amount by which the market value of the interest may fairly be said to have been reduced because of the interference now affecting the relevant land.

(4) However, the compensation must not be more than the compensation that would have been awarded if the interest had been acquired.

333 Compensation of person in actual occupation for interference with enjoyment of land

(1) A person is entitled to compensation if—

- (a) the person is in actual occupation of land (the “**relevant land**”) when the establishment of busway transport infrastructure on busway land (the “**infrastructure**”) is happening or when it is completed; and
- (b) the establishment of the infrastructure is a cause of interference with access (the “**access interference**”) for the relevant land; and
- (c) the access interference is a cause of interference (the “**enjoyment interference**”) with the person’s enjoyment of the relevant land.

(2) Subsection (1) applies only if—

- (a) either of the following applies—
 - (i) the busway land joins directly with the relevant land or with land (“**access land**”) giving access for the relevant land because of an easement or other right or interest;
 - (ii) the busway land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the busway land by travelling only over road; and

- (b) the practical effect of the access interference is substantially greater in nature and extent than the practical effects of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and
- (c) the practical effect of the access interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the establishment of the infrastructure.

(3) The amount of compensation is an amount fairly representing, in the particular circumstances—

- (a) if the person is in occupation of the relevant land at any time during the establishment of the infrastructure—the reasonable cost to the person of the enjoyment interference during the establishment; and
- (b) if the person is in occupation of the relevant land when the establishment of the infrastructure is completed—the reasonable cost to the person of the enjoyment interference, starting from when the establishment of the infrastructure is completed.

(4) In calculating the compensation, no regard is to be had to the reduction in the market value of an interest the person may have in the relevant land.

334 Chief executive may supply or contribute to new access arrangements

(1) The chief executive may, having regard to the establishment, or proposed establishment, of busway transport infrastructure on busway land, enter into an agreement with a person who is the owner or occupier of land (the “**relevant land**”) for—

- (a) the supply by the chief executive, or a contribution by the chief executive towards the supply, of works for alternative access for the relevant land; or
- (b) the carrying out, or a contribution towards the carrying out, of other works in relation to the relevant land for the purpose of access for the land.

(2) A person’s entitlement to compensation under this division is reduced to the extent provided for in an agreement under subsection (1).

335 Obtaining compensation

(1) A person claiming to be entitled to compensation under this division may apply in writing to the chief executive for the compensation.

(2) The application must be made—

- (a) within 12 months after the establishment of busway transport infrastructure on busway land giving rise to the claim for compensation; or
- (b) within a longer time agreed by the chief executive.

(3) If, within 60 days after the person applies under subsection (1), or a longer time agreed between the person and the chief executive, no agreement has been reached between the person and the chief executive on the application—

- (a) the person may apply to the Land Court for the compensation; or
- (b) the chief executive may apply to the Land Court to have the compensation decided by the court.

(4) The Land Court has jurisdiction to deal with an application made to it under subsection (3), including jurisdiction to require the chief executive to pay the person compensation decided by the court.

(5) Nothing in subsection (2)(a) stops a person from applying for compensation before the establishment of the busway transport infrastructure is completed if the claim relates to the person's occupation of land during the establishment of the infrastructure.

PART 5—BUSWAY SERVICE PROVIDER AUTHORISATION

336 Who may drive on a busway

(1) A person must not drive on a busway unless the person is—

- (a) driving in the course of the person's duty as an employee of—
 - (i) an authorised busway service provider for the busway; or
 - (ii) the holder of a service contract that requires the holder to provide a public passenger service for the busway; or

(iii) an emergency service; or

(b) authorised by the chief executive to drive on the busway.

Maximum penalty—160 penalty units.

(2) In this section—

“**emergency service**” means—

(a) the Queensland Ambulance Service; or

(b) the Queensland Fire and Rescue Authority; or

(c) the Queensland Police Service; or

(d) the State Emergency Services; or

(e) another entity approved by the chief executive.

337 Applying for authorisation as busway service provider

(1) A person may apply to the chief executive for authorisation as a busway service provider for a busway.

(2) The chief executive may, by written notice, require an applicant to give the chief executive stated written information that the chief executive reasonably requires to consider the application.

(3) The chief executive may reject the application if the applicant fails to comply with the requirement within a stated reasonable time, of not less than 28 days, without reasonable excuse.

338 Considering application for authorisation

(1) The chief executive must promptly consider an application for authorisation as a busway service provider and decide to grant, or refuse to grant, the authorisation.

(2) If the chief executive decides to grant the authorisation, the chief executive must promptly give the applicant a written notice stating—

(a) the decision; and

(b) the details of the authorisation, including its scope; and

(c) if the authorisation is subject to a condition—

(i) the details of the condition; and

(ii) the reason for the condition.

(3) If the chief executive decides not to grant the authorisation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision.

(4) A notice under subsection (2) or (3) must be accompanied by an information notice.

339 Authorisation conditions

(1) An authorisation may be subject to conditions.

(2) A condition may relate only to—

- (a) safely using a busway; or
- (b) something else prescribed under a regulation.

(3) An authorised busway service provider must comply with each condition of the provider's authorisation.

Maximum penalty for subsection (3)—40 penalty units.

340 Requiring authorisation conditions to be complied with

(1) This section applies if the chief executive reasonably believes an authorised busway service provider has not complied with a condition of the provider's authorisation.

(2) The chief executive may, by written notice, require the provider to remedy the breach within a reasonable period stated in the notice.

(3) If the provider has not complied with the condition, the provider must comply with the notice.

Maximum penalty for subsection (3)—40 penalty units.

341 Authorisation period

A busway service provider's authorisation remains in force until suspended, cancelled or surrendered.

342 Amending authorisation conditions on application

(1) An authorised busway service provider may apply to the chief executive for an amendment of the conditions of the provider's authorisation.

(2) The chief executive must consider the application and decide to grant, or refuse to grant, the amendment.

(3) The chief executive may amend a condition only if satisfied the condition is—

- (a) no longer appropriate; or
- (b) no longer consistent with generally accepted risk management principles.

(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.

(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision.

(6) A notice under subsection (5) must be accompanied by an information notice.

(7) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the applicant at the end of the 70 days.

343 Amending authorisation conditions without application

(1) This section applies if the chief executive considers the conditions of a busway service provider's authorisation should be amended although the provider has not applied for the amendment.

(2) Before amending the conditions, the chief executive must give the provider a written notice stating—

- (a) the proposed amendment; and
- (b) the reason for the amendment; and
- (c) an invitation to the provider to show in writing, within a stated time of at least 28 days, why the amendment should not be made.

(3) If, after considering all written representations made within the stated time, the chief executive still considers the conditions should be amended, the chief executive may amend the conditions—

- (a) in the way proposed; or
- (b) in another way, having regard to the representations.

(4) The chief executive must inform the provider of the decision by written notice.

(5) If the chief executive decides to amend the conditions, the notice must also state—

- (a) the amendment; and
- (b) the reason for the decision.

(6) A notice under subsection (5) must be accompanied by an information notice.

(7) Subsections (2) to (5) do not apply if the chief executive proposes to amend the conditions of a busway service provider's authorisation for a formal or clerical reason that does not adversely affect the provider's interests.

(8) The chief executive may amend a condition in a way mentioned in subsection (7) by written notice to the provider.

344 Suspending or cancelling authorisation

(1) This section applies if the chief executive—

- (a) reasonably suspects an authorised busway service provider has contravened a condition of the provider's authorisation; and
- (b) considers the authorisation should be suspended or cancelled (the **“proposed action”**).

(2) Before taking the proposed action, the chief executive must give the provider a written notice stating—

- (a) the proposed action; and
- (b) the reason for the proposed action; and
- (c) if the proposed action is to suspend the authorisation—the proposed suspension period; and

- (d) if the proposed action is to suspend the authorisation only in relation to a particular service operated by the provider—the service; and
- (e) an invitation to the provider to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

(3) If after considering all written representations made within the stated time, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action was to suspend the authorisation—suspend the authorisation—
 - (i) for no longer than the proposed suspension period; and
 - (ii) if the proposed suspension was limited to a particular service—only in relation to the service; or
- (b) if the proposed action was to cancel the authorisation—cancel the authorisation or suspend it for a period.

(4) The chief executive must inform the provider of the decision by written notice.

(5) If the chief executive decides to suspend or cancel the authorisation, the notice must also state the reason for the decision.

(6) If—

- (a) rather than cancel the authorisation, the chief executive suspends it on condition that the provider do certain things to rectify the failure to comply with a condition of the provider's authorisation; and
- (b) the provider does not rectify the failure within the suspension period;

the chief executive may immediately cancel the authorisation by written notice to the provider.

(7) A notice under subsection (4) or (6) must be accompanied by an information notice.

345 Immediate suspension of authorisation

(1) This section applies if the chief executive—

- (a) reasonably believes an authorised busway service provider has contravened a condition of the provider's authorisation; and
- (b) considers members of the public may be seriously harmed if urgent action to suspend the authorisation is not taken.

(2) The chief executive may immediately suspend the authorisation by written notice to the provider.

(3) The notice must state the reason for the decision and must be accompanied by an information notice.

(4) The chief executive must at the same time give the provider a notice under section 344(2).

(5) The authorisation is suspended under this section until the earlier of the following—

- (a) the chief executive gives the provider notice of the chief executive's decision under section 344;
- (b) the end of 60 days after the notice under subsection (2) was given to the provider.

346 Surrender of authorisation

An authorised busway service provider may, at any time, surrender the provider's authorisation by written notice to the chief executive.

CHAPTER 10—LIGHT RAIL AND LIGHT RAIL TRANSPORT INFRASTRUCTURE

PART 1—PRELIMINARY

347 Ways of achieving light rail objectives

The objectives of this Act for light rail are intended to be achieved by—

- (a) developing and putting into effect light rail transport infrastructure strategies; and

- (b) establishing a legal framework to allow the construction, maintenance, management and operation of light rail transport infrastructure in an effective and efficient way.

PART 2—CHIEF EXECUTIVE’S FUNCTIONS AND POWERS

348 Functions

The chief executive has the following functions in relation to light rail, including a proposed light rail, and light rail transport infrastructure, including proposed light rail transport infrastructure—

- (a) investigating, planning, establishing, maintaining, managing or operating, or arranging for someone else to investigate, plan, establish, maintain, manage or operate;
- (b) providing or arranging for associated services or works necessary or convenient for effective and efficient construction, management and operation;
- (c) efficiently integrating with any transport infrastructure, including busway transport infrastructure;
- (d) providing for appropriate levels of safety in construction, management and operation;
- (e) doing other things that directly or indirectly—
 - (i) are likely to enhance the provision of light rail transport infrastructure and passenger services on light rail; or
 - (ii) are incidental or complementary to the performance of another function.

349 Authority to enter or temporarily occupy or use land

(1) For the performance of a function under this chapter, the chief executive, or someone authorised in writing by the chief executive, may—

- (a) do 1 or more of the following in relation to land—

- (i) enter the land, whether or not for temporarily occupying or using the land;
 - (ii) temporarily occupy the land;
 - (iii) temporarily use the land; and
- (b) do anything on the land necessary or convenient for the function, including, for example, for light rail transport infrastructure works.

(2) However, the chief executive must not authorise a person to enter land under this section if the entry is a type of entry able to be authorised under an investigator's authority under chapter 11.

350 When land may be entered, occupied or used

(1) This section applies if a person proposes to enter, occupy or use land under this part.

(2) The person may enter, occupy or use the land without the permission of, or notice to, the owner or occupier of the land to perform urgent remedial work to facilitate or maintain the operation of light rail transport infrastructure.

(3) However, the person must, if practicable, notify the occupier orally or in writing before entering the land.

(4) If the entry, occupation or use is other than for the performance of urgent remedial work, the person may enter, occupy or use the land if the person—

- (a) obtains the written permission of—
 - (i) each person who is an owner of the land; and
 - (ii) each person who is an occupier of the land; or
- (b) gives at least 7 days written notice to the occupier before the entry, occupation or use.

(5) The notice under subsection (4)(b) must state—

- (a) all works proposed to be performed; and
- (b) all uses proposed to be made of the land; and
- (c) details of anything else proposed to be done on the land; and

- (d) the approximate period when occupation or use is expected to continue; and
- (e) that an owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use.

(6) A notice may be given under this section even though it is proposed to resume the land for light rail transport infrastructure.

(7) Power to enter, occupy or use land under this part does not authorise entry, occupation or use of a structure on the land used solely for residential purposes without the permission of the occupier of the land.

351 Compensation

(1) This section applies if land is entered, occupied or used under this part.

(2) An owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use, including by the taking or consumption of materials.

(3) However, compensation is payable only if written notice of the claim or proposed claim is given to the chief executive—

- (a) after the loss or damage happens, but within 1 year after the entry, occupation or use ends; or
- (b) at a later time allowed by the chief executive.

(4) In the absence of agreement between the owner or occupier and the chief executive about the payment of compensation, payment of compensation may be claimed and ordered in a proceeding brought in the Land Court.

(5) The Land Court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(6) Compensation paid under this section for loss or damage caused to land must not be more than the compensation that would have been awarded if the land had been acquired.

PART 3—ESTABLISHMENT OF LIGHT RAIL

352 Definition for pt 3

In this part—

“**road**” means a road under the *Land Act 1994*, but does not include a State-controlled road.

353 Declaration of land as light rail land

(1) The Minister may, by gazette notice, declare land to be light rail land.

(2) Land declared to be light rail land—

(a) must be—

(i) identified specifically in the gazette notice; or

(ii) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available for perusal at an office of the department mentioned in the gazette notice; and

(b) must consist only of land for a light rail and necessary light rail transport infrastructure.

(3) The identification of land declared to be light rail land may, but need not, be by reference to strata occupied by the land.

(4) Land may be declared to be light rail land only if it is—

(a) land acquired by the State or the chief executive for light rail purposes, including for light rail transport infrastructure; or

(b) busway land, but only if it is the subject of a lease to the State under the *Land Act 1994*, section 17;⁴⁴ or

(c) a road.

354 Effect on land of light rail declaration

(1) If a road or a part of a road is declared under this part to be light rail land, the road or part—

44 *Land Act 1994*, section 17 (Granting land to the State)

- (a) stops being a road; and
- (b) becomes unallocated State land.

(2) If a lot or a part of a lot under the *Land Title Act 1994* is declared under this part to be light rail land, the lot or part becomes unallocated State land.

(3) If busway land is declared under this part to be light rail land—

- (a) any lease of the land under the *Land Act 1994*, section 17 provided for under chapter 9 ends; and
- (b) the land stops being busway land and becomes unallocated State land.

(4) Light rail land can not be declared under section 24 to be a State-controlled road.

(5) The Governor in Council must lease light rail land that is unallocated State land to the State under the *Land Act 1994*, section 17.

(6) The lease is in perpetuity and, if demanded, for a rent of \$1 a year.

355 Sublease of lease of light rail land

(1) The State may sublease its lease of light rail land to a light rail manager for a light rail established or proposed to be established on the light rail land on terms negotiated and agreed between the parties.

(2) For the *Land Act 1994*, section 332(1)(b),⁴⁵ the light rail manager is eligible to hold a sublease of the lease.

(3) The first sublease under subsection (1) (the “**original sublease**”) may include an option to renew the sublease, and any subsequent sublease may in turn include an option to renew.

(4) The terms of any option and any subsequent sublease are to be those negotiated and agreed between the parties.

(5) The *Land Act 1994*, section 336(2)(a)⁴⁶ does not apply to a document of amendment of the original sublease or any subsequent sublease.

(6) If the light rail manager attaches light rail transport infrastructure to the land the subject of the original sublease or a subsequent sublease, the

⁴⁵ *Land Act 1994*, section 332 (Subleases require Minister’s approval)

⁴⁶ *Land Act 1994*, section 336 (Amending a sublease)

infrastructure immediately becomes the property of the chief executive unless the parties to the sublease agree it is to become the property of the chief executive at a later time.

(7) Despite any agreement under subsection (6), the infrastructure, if it has not already become the property of the chief executive, becomes the property of the chief executive—

- (a) if there is no subsequent sublease—at the end of the original sublease; or
- (b) if there is only 1 subsequent sublease—at the end of the subsequent sublease; or
- (c) if there are 2 or more subsequent subleases—at the end of the last of the subsequent subleases.

(8) Neither the original sublease nor any subsequent sublease stops being a sublease only because—

- (a) under part 4, land the subject of the sublease is taken to be a State-controlled road or a road under the control of a local government; or
- (b) persons are expressly or impliedly permitted by the chief executive under this chapter to be on the subleased land.

(9) This section does not stop the granting of a lease or sublease to a light rail manager for a light rail, other than under this section, of land that is not light rail land but on which there is, or is proposed to be, light rail transport infrastructure.

(10) In this section—

“**light rail land**” means light rail land that is leased to the State under the *Land Act 1994*, section 17.⁴⁷

356 Development of light rail and light rail transport infrastructure

(1) This section applies to the establishment of a light rail, including all investigating, planning, maintaining, managing, operating, and arranging for the light rail or for light rail transport infrastructure for the light rail.

⁴⁷ *Land Act 1994*, section 17 (Granting land to the State)

(2) Nothing in this chapter is intended to affect the operation of the *Integrated Planning Act 1997* to the extent that the establishment of the light rail is development under that Act.

PART 4—MANAGEMENT OF LIGHT RAIL LAND AND LIGHT RAIL TRANSPORT INFRASTRUCTURE

Division 1—Transport infrastructure interaction

357 Altering road levels by a local government

(1) The chief executive may require a local government having control of a road to alter the level of the road for—

- (a) light rail transport infrastructure works; or
- (b) the management or operation of a light rail.

(2) However, the chief executive—

- (a) must consult with the local government about the nature and extent of the alteration of the level of the road before the alteration is started; and
- (b) subject to an agreement between the chief executive and the local government arising out of the consultation, pay all reasonable costs incurred by the local government in altering the road level.

(3) The local government must comply with the chief executive's requirements.

358 Permitted construction by local government of roads over or under light rail land

(1) Despite section 354(1), the chief executive may permit a local government to construct, maintain and operate a road located on light rail land, consisting of—

- (a) a bridge or other structure allowing traffic to pass over the level at which light rail vehicles use the light rail land; or

- (b) a structure allowing traffic to pass under the level at which light rail vehicles use the light rail land.

(2) However, if there is a light rail manager for a light rail established on the light rail land, the chief executive must consult with the light rail manager before deciding whether to give the permission.

(3) The permission may be given on reasonable conditions.

(4) In deciding whether to give the permission, the chief executive must consider the limiting effect the use of the road is likely to have on the use of the light rail land for light rail passenger services.

(5) While the bridge or other structure is being used for the road—

- (a) none of the following has any duty or liability for the road or its use or operation—

- (i) the chief executive;
- (ii) if there is a light rail manager for a light rail established on the light rail land, the manager;
- (iii) if there is a light rail operator for a light rail established on the light rail land, the operator; and

- (b) the road is taken to be a road of which the local government has control under the *Local Government Act 1993*, section 901(1); and

- (c) the road is taken to be a road under any Act about the use of vehicles on a road.

(6) Unless the chief executive and the local government otherwise agree—

- (a) the local government is responsible for maintaining the road and the bridge or other structure; and
- (b) if the bridge or other structure stops being used for the road, the local government is responsible for the cost of taking the bridge or other structure away and of restoring the light rail land.

359 Designation of light rail land for use as road under local government control

(1) Despite section 354(1), the chief executive may, by gazette notice, designate light rail land described in the notice as light rail land that is to be used as a road under a local government's control.

(2) The chief executive must also—

- (a) give a copy of the notice to the local government; and
- (b) publish a copy of the notice in a newspaper circulating generally in the area of the light rail land.

(3) If there is a light rail manager for a light rail established on the light rail land, the chief executive must consult with the light rail manager before designating the light rail land under the notice.

(4) The land described in the notice must be land generally suitable for both of the following—

- (a) use as a road;
- (b) the operation of a light rail.

(5) The notice may include directions with which the local government must comply, including directions about the local government's exercise of powers under the *Local Government Act 1993* for roads it controls.

(6) However, the chief executive must consult with the local government before including any directions in the notice.

(7) While the notice is in force, the land described in the notice is taken to be—

- (a) a road of which the local government has control under the *Local Government Act 1993*, section 901(1); and
- (b) a road under any Act about the use of vehicles on a road.

(8) However, in taking the necessary steps mentioned in the *Local Government Act 1993*, section 901(2), the local government must comply with all directions included in the notice, including the notice as amended from time to time.

360 Designation of light rail land for use as State-controlled road

(1) Despite section 354(1), the Minister may, by gazette notice, designate light rail land described in the notice as light rail land to be used as a State-controlled road.

(2) The Minister must also publish a copy of the notice in a newspaper circulating generally in the area of the light rail land.

(3) If there is a light rail manager for a light rail established on the light rail land, the Minister must consult with the manager before designating the light rail land under the notice.

(4) The land described in the notice must be land generally suitable for both of the following—

- (a) use as a State-controlled road;
- (b) the operation of a light rail.

(5) The notice may include operational arrangements applying to the use of the light rail land as a State-controlled road.

(6) While the notice is in force, the land described in the notice is, except to the extent provided for in the notice, taken to be—

- (a) a State-controlled road for the provisions of this Act, other than chapter 6, part 2, division 1 and part 5, division 3,⁴⁸ and of any other Act, applying to State-controlled roads; and
- (b) a road under any Act about the use of vehicles on a road.

361 No presumption of dedication of road

(1) This section applies if the public uses light rail land as a road, or for access purposes other than as a road.

(2) The light rail land does not at law, either because the use is authorised or permitted by the chief executive or for another reason, become dedicated to public use as a road.

Division 2—Interfering with light rail transport infrastructure

362 Interfering with light rail transport infrastructure

(1) A person must not interfere with or carry out works on light rail transport infrastructure unless—

- (a) the person has the written approval of—

48 Chapter 6 (Road transport infrastructure), part 2 (State-controlled roads), division 1 (Declaration of State-controlled roads) and part 5 (Management of State-controlled roads), division 3 (Public utility plant on State-controlled roads)

- (i) if there is a light rail manager for a light rail established for the light rail transport infrastructure—the manager; or
- (ii) otherwise—the chief executive; or
- (b) the interference or works are for the construction, maintenance or operation of a road permitted under this part to be constructed, maintained and operated across, over or under the light rail transport infrastructure; or
- (c) the interference or works are otherwise authorised under this Act or another Act.

Maximum penalty—160 penalty units.

(2) Subsection (1) applies even if the interference or works are for the carrying out of functions that apart from subsection (1) are lawful on light rail land that, under division 1, is taken to be—

- (a) a road of which a local government has control under the *Local Government Act 1993*, section 901(1); or
- (b) a State-controlled road for provisions of any Act applying to State-controlled roads.

(3) An approval under subsection (1)(a) may be given on reasonable conditions.

(4) However, a light rail manager for a light rail may give the approval only if the chief executive—

- (a) has been consulted about the giving of the approval; and
- (b) has approved all conditions to which the approval is subject.

(5) The person given the approval must comply with the conditions of the approval.

Maximum penalty—40 penalty units.

(6) Subsection (1) does not apply to the carrying out of urgent maintenance of a light rail or light rail transport infrastructure.

363 Rectifying unauthorised interference or works

(1) This section applies if a person (the “**identified person**”) interferes with or carries out works on light rail transport infrastructure in contravention of section 362(1).

(2) If there is a light rail manager for a light rail established for the light rail transport infrastructure, the manager may, by written notice given to the identified person, require the person to rectify the interference or the effect of the carrying out of the works within a stated reasonable time.

(3) The light rail manager may give the identified person the notice only if the chief executive—

- (a) has been consulted about the giving of the notice; and
- (b) has approved the terms of the notice.

(4) If subsection (2) does not apply, the chief executive may, by written notice given to the identified person, require the person to rectify the interference, or the effect of the carrying out of the works, within a stated reasonable time.

(5) The identified person must comply with a notice given under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) If the identified person does not comply with the notice, the person who gave the notice (the “**notifier**”) may rectify the interference or the effect of the carrying out of the works.

(7) The identified person must pay the amount of the notifier’s reasonable costs of—

- (a) rectifying the interference or the effect of the carrying out of the works; or
- (b) changing the way the light rail transport infrastructure is built, maintained or operated because of the interference or the effect of the carrying out of the works.

(8) The notifier may recover the amount as a debt.

(9) In this section—

“**rectify the interference**” includes the following—

- (a) alter, dismantle or take away works;
- (b) fix damage caused by the interference.

Division 3—Public utility plant**364 Definitions for div 3**

In this division—

“busway land” means busway land that, when declared under chapter 9 to be busway land, was a road or part of a road.

“light rail authority”, for light rail land, means—

- (a) if there is a light rail manager for a light rail established, or proposed to be established, on the light rail land—each of the following—
 - (i) the chief executive;
 - (ii) the light rail manager; or
- (b) otherwise—the chief executive.

“light rail land” means light rail land that, when declared under this chapter to be light rail land, was—

- (a) a road or part of a road; or
- (b) busway land.

365 Retention of ownership of public utility plant

(1) This section applies if, immediately before the declaration of land as light rail land public utility plant is located on the land.

(2) The declaration does not affect the ownership of the public utility plant.

366 Public utility plant on light rail land

(1) A public utility provider may do the following things on light rail land—

- (a) build, replace or take away, or alter, other than for maintenance or repair, its public utility plant;
- (b) maintain or repair, or alter, for maintenance or repair, its public utility plant;

- (c) take reasonable steps to stop obstruction or potential obstruction to, or interference or potential interference with, its public utility plant.

(2) However, the provider may do things mentioned in subsection (1) only if each light rail authority for the light rail land agrees in writing.

(3) A light rail authority must not unreasonably withhold agreement.

(4) Despite subsection (2), a public utility provider may, if acting in the interests of public safety, carry out urgent maintenance of its public utility plant on light rail land without the written agreement of each light rail authority for the light rail land, but only if the provider—

- (a) makes all reasonable attempts to obtain each authority's oral agreement to the carrying out of the maintenance; and
- (b) whether or not each authority's oral agreement is obtained, acts as quickly as possible to advise each authority of the details of the maintenance being carried out.

(5) Building or altering public utility plant does not affect the ownership of the plant.

367 Chief executive must give provider information

If asked in writing by a public utility provider, the chief executive must give the provider information about lines and levels for planned light rail transport infrastructure on light rail land necessary to enable the provider to minimise possible adverse affects of the establishment of the infrastructure on the provider's works.

368 Public utility provider to consult with chief executive before replacing public utility plant

(1) If a public utility provider proposes to replace the whole or a substantial proportion of its public utility plant on light rail land, the provider must, before seeking written agreement under section 366, consult with each entity that is a light rail authority for the light rail land.

(2) The object of the consultation is to identify mutually beneficial arrangements for the replacement of the public utility plant, having regard to existing development plans for the light rail land.

369 Public utility provider to comply with light rail authority's agreement

(1) This section applies if, in relation to light rail land, a public utility provider does something mentioned in section 366(1) (the “**relevant action**”)—

- (a) without the written or oral agreement of a light rail authority required under section 366; or
- (b) in a way inconsistent with an agreement with a light rail authority for the light rail land; or
- (c) in a way inconsistent with a regulation about how things mentioned in section 366(1) are to be done.

(2) If this section applies because of subsection (1)(a) or (b), the light rail authority may, by written notice given to the public utility provider, require the provider, at the provider's cost, and within the time stated in the notice, to take action to remedy the relevant action.

(3) If this section applies because of subsection (1)(c), the chief executive may, by written notice given to the public utility provider, require the provider, at the provider's cost, and within the time stated in the notice, to take action to remedy the relevant action.

(4) The time stated in a notice under subsection (2) or (3) must be a time that is reasonable in the circumstances.

(5) If the provider does not comply with the notice, the light rail authority giving the notice to the provider may arrange for action the authority considers necessary to remedy the relevant action.

(6) The light rail authority's reasonable expenses in arranging for the action to be carried out is a debt payable by the provider to the light rail authority.

370 Chief executive may require public utility provider to alter position of public utility plant

(1) The chief executive may require a public utility provider to alter the position of the provider's public utility plant on light rail land if the chief executive considers that the plant will interfere with the exercise of the chief executive's powers for the light rail land.

(2) The chief executive is responsible only for the cost of altering the position of the public utility plant.

371 Information by public utility provider to chief executive

(1) If, in relation to public utility plant on light rail land, a public utility provider does something mentioned in section 366(1), the provider must prepare records adequately defining the location of the plant.

(2) A public utility provider owning public utility plant located on light rail land must, if asked by a light rail authority for the light rail land, give the light rail authority information adequately defining the location of the plant.

Maximum penalty for subsection (2)—40 penalty units.

372 Liability for damage caused by failure to comply with request for information

(1) This section applies if—

- (a) a light rail authority for light rail land causes damage to public utility plant located on the light rail land; and
- (b) before the damage was caused, the light rail authority had asked for information under section 371(2) from the public utility provider owning the public utility plant; and
- (c) the provider had not, within a reasonable time, complied with the request; and
- (d) the damage was caused because of the failure to comply with the request.

(2) Unless the light rail authority otherwise agrees, the authority is not liable for the damage.

373 Liability for damage caused by failure to give enough detail about location of public utility plant

(1) This section applies if—

- (a) a light rail authority for light rail land cause damage to public utility plant located on the light rail land; and
- (b) information supplied to the light rail authority under section 371(2) did not define in enough detail the location of the plant; and

- (c) the damage was caused because of the failure to define in enough detail the location of the plant.

(2) Unless the light rail authority otherwise agrees, the authority is not liable for the damage.

374 Liability for damage caused because of failure to comply with light rail authority's requirements

(1) This section applies if—

- (a) a light rail authority for light rail land causes damage to public utility plant located on the light rail land; and
- (b) the damage was caused because the public utility provider owing the plant did something mentioned in section 366(1) in relation to the plant other than under the light rail authority's requirements under this division.

(2) Unless the light rail authority otherwise agrees, the authority is not liable for the damage.

375 Liability of public utility provider to pay additional expenses incurred by light rail authority

(1) This section applies if a light rail authority for light rail land incurs additional expense in carrying out light rail transport infrastructure works on the light rail land because a public utility provider—

- (a) did not supply within a reasonable time information asked for by the authority under section 371(2); or
- (b) in supplying information to the authority, did not define in enough detail the location of public utility plant; or
- (c) did something mentioned in section 366(1) in relation to public utility plant other than under the authority's requirements under this division.

(2) The public utility provider is liable to pay the light rail authority the additional expense.

376 Replacement or reconstruction of public utility plant

(1) If the carrying out of light rail transport infrastructure works by or for a light rail authority for light rail land requires taking away or replacing public utility plant, the light rail authority can not be compelled to replace or reconstruct the plant in its previous location and form.

(2) If the plant is replaced or reconstructed—

- (a) it must be done under the light rail authority's requirements; and
- (b) it must be at the authority's expense, but the cost to the authority of replacement or reconstruction may be reduced by agreement between the authority and the public utility provider owning the plant after taking into account—
 - (i) the remaining life of the plant; and
 - (ii) the salvage or scrap value of the plant; and
 - (iii) additional expense incurred because of inaccurate information supplied by the provider about the location of the plant; and
 - (iv) additional expense incurred because the plant was not constructed in accordance with the authority's requirements.

Division 4—Use of light rail land**377 Trespass on light rail land**

(1) A person must not be on light rail land if the person does not have the permission of the relevant person for the light rail land to be on the light rail land

Maximum penalty—40 penalty units.

(2) For subsection (1), permission may be given, for example—

- (a) expressly, by signs, structures, textured pavement or painted lines designating points for vehicles or pedestrians to cross the light rail land; or
- (b) impliedly, by the absence of demarcation between ordinary road and pavement incorporating light rail track on the light rail land.

(3) Subsection (1) does not apply to a person who is on light rail land if, under division 1, the light rail land is taken to be—

(a) a road of which a local government has control under the *Local Government Act 1993*, section 901(1); or

(b) a State-controlled road.

(4) A regulation may include rules about the use by the following of light rail land—

(a) light rail vehicles operating on a light rail established on the light rail land;

(b) persons having the permission of the relevant person for the light rail land to be on the light rail land.

(5) In this section—

“**relevant person**”, for light rail land, means—

(a) if there is a light rail manager for a light rail established on the light rail land—the light rail manager; or

(b) otherwise—the chief executive.

Division 5—Compensation entitlements

378 Definitions for div 5

In this division—

“**access**”, for land, means—

(a) access to the land from the road network, whether or not through other land; or

(b) access from the land to the road network, whether or not through other land.

“**busway land**” means busway land that, when declared under chapter 9 to be busway land, was a road or part of a road.

“**establishment**”, of light rail transport infrastructure on light rail land, includes the following—

(a) initial construction of the light rail transport infrastructure on the light rail land;

(b) construction for changing or adding to light rail transport infrastructure previously constructed on the light rail land;

- (c) putting in place the arrangements under which persons are permitted or not permitted to be on the light rail land.

“interference”, with access, includes loss or reduction of access.

“light rail land” means light rail land that, when declared under this chapter to be light rail land, was—

- (a) a road or part of a road; or
- (b) busway land.

379 No entitlement to compensation for particular matters

(1) A person having an interest in land (the **“relevant land”**) has no entitlement at law, except to the extent this division provides, to compensation for a matter listed in subsection (2), to the extent the matter is caused by—

- (a) the establishment of a light rail; or
- (b) the establishment or proposed establishment of light rail transport infrastructure on light rail land; or
- (c) the operation of a light rail on light rail land.

(2) The matters are—

- (a) the adverse affect on the amenity or likely amenity of the neighbourhood of the relevant land; and
- (b) interference with an activity of a business, commercial, industrial or residential nature carried out on the relevant land; and
- (c) loss or damage arising directly or indirectly from interference with access for the relevant land; and
- (d) the reduction or loss of a right of access for the relevant land and loss or damage caused by the reduction or loss of the right of access.

380 Compensation for reduced market value of interest in land

(1) A person who has an interest in land (the **“relevant land”**) is entitled to compensation if the establishment of light rail transport infrastructure on light rail land (the **“infrastructure”**), when completed, is a cause of interference (the **“interference”**) with access for the relevant land.

(2) Subsection (1) applies only if—

(a) either of the following applies—

- (i) the light rail land joins directly with the relevant land or with land (“**access land**”) giving access for the relevant land because of an easement or other right or interest;
- (ii) the light rail land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the light rail land by travelling only over road; and

(b) the practical effect of the interference is substantially greater in nature and extent than the practical effect of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and

(c) the practical effect of the access interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the establishment of the infrastructure.

(3) The amount of the compensation is the amount by which the market value of the interest may fairly be said to have been reduced because of the interference now affecting the relevant land.

(4) However, the compensation must not be more than the compensation that would have been awarded if the interest had been acquired.

381 Compensation of person in actual occupation for interference with enjoyment of land

(1) A person is entitled to compensation if—

- (a) the person is in actual occupation of land (the “**relevant land**”) when the establishment of light rail transport infrastructure on light rail land (the “**infrastructure**”) is happening or when it is completed; and
- (b) the establishment of the infrastructure is a cause of interference with access (the “**access interference**”) for the relevant land; and
- (c) the access interference is a cause of interference (the “**enjoyment interference**”) with the person’s enjoyment of the relevant land.

(2) Subsection (1) applies only if—

(a) either of the following applies—

- (i) the light rail land joins directly with the relevant land or with land (“**access land**”) giving access for the relevant land because of an easement or other right or interest;
- (ii) the light rail land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the light rail land by travelling only over road; and

(b) the practical effect of the access interference is substantially greater in nature and extent than the practical effects of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and

(c) the practical effect of the access interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the infrastructure.

(3) The amount of compensation is an amount fairly representing, in the particular circumstances—

(a) if the person is in occupation of the relevant land at any time during the establishment of the infrastructure—the reasonable cost to the person of the enjoyment interference during the establishment; and

(b) if the person is in occupation of the relevant land when the establishment of the infrastructure is completed—the reasonable cost to the person of the enjoyment interference, starting from when the establishment of the infrastructure is completed.

(4) In calculating the compensation, no regard is to be had to the reduction in the market value of an interest the person may have in the relevant land.

382 Chief executive may supply or contribute to new access arrangements

(1) The chief executive may, having regard to the establishment, or proposed establishment, of light rail transport infrastructure on light rail

land, enter into an agreement with a person who is the owner or occupier of land (the “**relevant land**”) for—

- (a) the supply by the chief executive, or a contribution by the chief executive towards the supply, of works for alternative access for the relevant land; or
- (b) the carrying out, or a contribution towards the carrying out, of other works in relation to the relevant land for the purpose of access for the land.

(2) A person’s entitlement to compensation under this division is reduced to the extent provided for in an agreement under subsection (1).

383 Obtaining compensation

(1) A person claiming to be entitled to compensation under this division may apply in writing to the chief executive for the compensation.

(2) The application must be made—

- (a) within 12 months after the establishment of light rail transport infrastructure on light rail land giving rise to the claim for compensation; or
- (b) within a longer time agreed by the chief executive.

(3) If, within 60 days after the person applies under subsection (1), or a longer time agreed between the person and the chief executive, no agreement has been reached between the person and the chief executive on the application—

- (a) the person may apply to the Land Court for the compensation; or
- (b) the chief executive may apply to the Land Court to have the compensation decided by the court.

(4) The Land Court has jurisdiction to deal with an application made to it under subsection (3), including jurisdiction to require the chief executive to pay the person compensation decided by the court.

(5) Nothing in subsection (2)(a) stops a person from applying for compensation before the establishment of the light rail transport infrastructure is completed if the claim relates to the person’s occupation of land during the establishment of the infrastructure.

PART 5—ACCREDITATION PROVISIONS FOR LIGHT RAIL

384 Reference to light rail in pt 5

In this part, other than in this section, section 385 and section 399, a reference to a light rail is a reference to a light rail that is—

- (a) established on light rail land; or
- (b) proposed to be established on light rail land; or
- (c) proposed to be established on land proposed to become light rail land.

385 Accreditation of managers and operators

(1) A person must not manage a light rail on light rail land unless the person is accredited as the light rail manager for the light rail.

Maximum penalty—160 penalty units.

(2) A person must not operate rolling stock on a light rail on light rail land unless the person is accredited as a light rail operator for the light rail.

Maximum penalty—160 penalty units.

386 Applications for accreditation

A person may apply to the chief executive for accreditation as—

- (a) the light rail manager for a light rail; or
- (b) a light rail operator for a light rail; or
- (c) the light rail manager and a light rail operator for a light rail.

387 Additional information for applications

(1) The chief executive may, by written notice, require an applicant to give the chief executive the stated written information the chief executive reasonably requires to consider the application.

(2) The chief executive may reject the application if the applicant does not comply with the requirement within a stated reasonable time, not less than 28 days, without reasonable excuse.

388 Giving accreditation

(1) The chief executive must promptly consider an application for accreditation and give, or refuse to give, the accreditation.

(2) The chief executive must accredit an applicant as the light rail manager for a light rail if satisfied—

- (a) the applicant—
 - (i) is accredited in another State to manage a similar type of light rail; or
 - (ii) has the competency and capacity to manage the light rail safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the light rail; and
- (d) the applicant has rights of access to all land the applicant needs for the establishment and operation of the light rail; and
- (e) the applicant has rights to the use of all light rail transport infrastructure and other infrastructure the applicant needs for the establishment and operation of the light rail.

(3) The chief executive must accredit an applicant as a light rail operator for a light rail if satisfied—

- (a) the applicant—
 - (i) is accredited in another State to operate rolling stock on a light rail for a similar type of service; or
 - (ii) has the competency and capacity to operate rolling stock on the light rail safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the light rail; and
- (d) the applicant has or will have an agreement with the light rail's manager that—
 - (i) authorises the applicant to operate particular rolling stock on the light rail; and

- (ii) includes appropriate arrangements for the safe operation of the rolling stock.

(4) Subsection (3)(d) does not apply if the applicant is applying for accreditation as both the light rail manager and the light rail operator for the light rail.

(5) In considering a safety management system, the chief executive must consider—

- (a) what the applicant proposes for the light rail; and
- (b) the appropriateness of the safety management system for what the applicant proposes; and
- (c) the safety levels achievable, consistent with the nature of what the applicant proposes, at a reasonable cost; and
- (d) the need for efficient and competitive light rail transport services; and
- (e) consistency with generally accepted risk management principles; and
- (f) the levels of safety proposed compared with the levels of safety of competing transport modes.

(6) Subsection (5) does not limit what the chief executive may consider in considering a safety management system.

(7) If the chief executive decides to give the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the details of the accreditation, including its scope; and
- (c) if the accreditation is given on conditions—
 - (i) the details of the conditions; and
 - (ii) the reason for the conditions.

(8) If the chief executive decides not give the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision.

(9) A written notice given under subsection (7) or (8) must be accompanied by an information notice for the decision the subject of the notice.

389 Annual levy

(1) A regulation may impose levies on light rail managers and operators for light rail relating to their accreditation on a basis prescribed under the regulation.

(2) The chief executive must give each light rail manager and light rail operator for a light rail written notice of the amount of a levy applying to the manager or operator.

(3) The chief executive may recover the amount of a levy as a debt owed to the chief executive.

390 Accreditation conditions

(1) An accreditation may be subject to conditions.

(2) For the accreditation of a person as the light rail manager for a light rail, a condition must be about—

- (a) constructing or maintaining the light rail; or
- (b) managing the light rail safely, considering the need for efficient and competitive services.

(3) For the accreditation of a person as a light rail operator for a light rail, a condition must be about—

- (a) operating rolling stock safely, considering the need for efficient and competitive services; or
- (b) the person having an agreement with the light rail's manager that—
 - (i) authorises the person to operate particular rolling stock on the light rail; and
 - (ii) includes appropriate arrangements for the safe operation of the rolling stock.

(4) However, for either type of accreditation, a condition may also be about—

- (a) the person's financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the light rail; or
- (b) paying accreditation fees; or
- (c) something else prescribed under a regulation.

(5) An accredited person must comply with each condition of the person's accreditation.

Maximum penalty for subsection (5)—40 penalty units.

391 Requiring accreditation conditions to be complied with

(1) This section applies if the chief executive reasonably believes an accredited person has not complied with a condition of the person's accreditation.

(2) The chief executive may, by written notice, require the person to remedy the breach within a reasonable period stated in the notice.

(3) If the person has not complied with the condition of the person's accreditation, the person must comply with the notice.

Maximum penalty for subsection (3)—60 penalty units.

392 Accreditation period

An accreditation remains in force until it is suspended, cancelled or surrendered.

393 Amending accreditation conditions on application

(1) An accredited person may apply to the chief executive for an amendment of the conditions of the person's accreditation.

(2) The chief executive must consider the application and decide whether to make the amendment.

(3) The chief executive may amend a condition only if satisfied the condition is—

- (a) no longer appropriate; or
- (b) no longer consistent with generally accepted risk management principles.

(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.

(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision.

(6) A written notice given under subsection (5) must be accompanied by an information notice for the decision the subject of the notice.

(7) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the accredited person at the end of the 70 days.

394 Amending accreditation conditions without application

(1) This section applies if the chief executive considers the conditions of a person's accreditation should be amended but the person has not applied for the proposed amendment.

(2) Before amending the conditions, the chief executive must give the person a written notice—

- (a) stating the proposed amendment; and
- (b) stating the reason for the proposed amendment; and
- (c) inviting the person to show, within a stated time of at least 28 days, why the proposed amendment should not be made.

(3) If, after considering all written representations made within the stated time, the chief executive still considers the conditions should be amended, the chief executive may amend the conditions—

- (a) in the way proposed; or
- (b) in another way, having regard to the representations.

(4) The chief executive must inform the person of the decision by written notice.

(5) If the chief executive decides to amend the conditions, the notice must also state—

- (a) the amendment; and

(b) the reason for the decision.

(6) A written notice given under subsections (4) and (5) must be accompanied by an information notice for the decision the subject of the notice.

(7) Subsections (2) to (5) do not apply if the chief executive proposes to amend the conditions of a person's accreditation for a formal or clerical reason not adversely affecting the person's interests.

(8) The chief executive may amend a condition in a way mentioned in subsection (7) by written notice given to the person.

395 Suspending or cancelling accreditation

(1) This section applies if the chief executive—

- (a) reasonably suspects an accredited person has not complied with a condition of the person's accreditation; and
- (b) considers the person's accreditation should be suspended or cancelled (the “**proposed action**”).

(2) Before taking the proposed action, the chief executive must give the person a written notice—

- (a) stating the proposed action; and
- (b) stating the reason for the proposed action; and
- (c) if the proposed action is suspension of the accreditation, stating the proposed suspension period; and
- (d) if the proposed action is a limited suspension of the accreditation,⁴⁹ stating the details of the proposed limitation; and
- (e) inviting the person to show, within a stated time of at least 28 days, why the proposed action should not be taken.

(3) If, after considering all written representations made within the stated time, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action is to suspend the accreditation—suspend the accreditation—
 - (i) for no longer than the proposed suspension period; and

49 See section 397 (Limited suspension of accreditation).

- (ii) if the proposed action was a limited suspension, by no more than the proposed limitation; or
 - (b) if the proposed action was to cancel the accreditation—cancel the accreditation or suspend it for a period.
- (4) The chief executive must inform the person of the decision by written notice.
- (5) If the chief executive decides to suspend or cancel the accreditation, the notice must also state the reason for the decision.
- (6) The chief executive may immediately cancel the accreditation by written notice given to the person if—
- (a) rather than cancel the accreditation, the chief executive has suspended it on condition the person do certain things to rectify the failure to comply with a condition of the person's accreditation; but
 - (b) the person has not rectified the failure within the suspension period.
- (7) The notice must state the reason for the decision.
- (8) A written notice given under subsection (4) or (6) must be accompanied by an information notice for the decision the subject of the notice.

396 Immediate suspension of accreditation

- (1) This section applies if the chief executive—
- (a) reasonably believes an accredited person has not complied with a condition of the person's accreditation; and
 - (b) considers members of the public may be seriously harmed if urgent action to suspend the accreditation is not taken.
- (2) The chief executive may immediately suspend an accreditation by written notice given to the person.
- (3) The notice must state the reason for the decision and must be accompanied by an information notice for the decision.

(4) The chief executive must at the same time give the person a notice under section 395(2).⁵⁰

(5) The accreditation is suspended under this section until the earlier of the following—

- (a) the chief executive gives the person notice of the chief executive's decision under section 395;
- (b) the end of 60 days after the notice under subsection (2) was given to the person.

397 Limited suspension of accreditation

Under section 395 or 396, the chief executive may limit a suspension to, for example—

- (a) a particular light rail for which the accredited person is accredited; or
- (b) a particular service operated by the accredited person.

398 Surrender of accreditation

An accredited person may, at any time, surrender the person's accreditation by written notice given to the chief executive.

399 Accreditation for proposed light rail

(1) This section applies if—

- (a) a person holds an accreditation under this part as the light rail manager, a light rail operator, or the light rail manager and a light rail operator, for a light rail—
 - (i) proposed to be established on light rail land; or
 - (ii) proposed to be established on land proposed to become light rail land; and
- (b) the light rail is established on light rail land substantially in the way proposed.

50 Section 395 (Suspending or cancelling accreditation)

(2) The accreditation automatically becomes an accreditation under this Act that the person holds as the light rail manager, a light rail operator, or the light rail manager and a light rail operator, for the light rail as established.

PART 6—LIGHT RAIL INCIDENTS

400 Application of ch 7, pt 6 and other provisions

(1) Chapter 7, part 6⁵¹ applies for a light rail in the same way it applies for a railway.

(2) For applying chapter 7, part 6 for a light rail—

- (a) a reference to a railway is taken to be a reference to a light rail; and
- (b) a reference to an accredited person is taken to be a reference to an accredited person for this chapter; and
- (c) a reference to a rail safety officer is taken to be a reference to a person who is an authorised person.

CHAPTER 11—INVESTIGATING POTENTIAL BUSWAY OR LIGHT RAIL

401 Purpose of ch 11

The purpose of this chapter is—

- (a) to allow persons authorised by the chief executive to enter land to investigate the land's potential and suitability for the development of busway or light rail transport infrastructure (the “**development**”) before powers under chapter 9 or 10 are exercised; and

51 Chapter 7 (Rail transport infrastructure and other matters), part 6 (Railway incidents)

- (b) to safeguard the interests of the owners and occupiers of land affected by the entry.

402 Definitions for ch 11

In this chapter—

“affected person” for land, means each person who is an owner or occupier of the land.

“associated person”, of an investigator, means any of the following—

- (a) if the investigator is a corporation, the corporation’s chief executive, secretary or directors;
- (b) the investigator’s employees or partners who are individuals;
- (c) a person who is an agent of, or contractor for, the investigator, and engaged in writing for the investigator’s authority;
- (d) employees of an agent or contractor mentioned in paragraph (c);
- (e) if a person mentioned in paragraph (c) is a corporation, the corporation’s chief executive, secretary, directors or employees.

“compensation notice” see section 411.

“development” see section 401.

“investigator” means a person who holds an investigator’s authority.

“investigator’s authority” means an investigator’s authority given under this chapter.

“rectification notice” see section 411.

403 How to apply for investigator’s authority

(1) This section applies if the person proposing the development can not successfully negotiate entry to the land with all affected persons for the land.

(2) The person may apply to the chief executive for an investigator’s authority for the land.

(3) The applicant must give the chief executive the following in support of the application—

- (a) details of the proposed development, including the land on which the development is proposed to be located;

- (b) the likely demand for the services associated with the proposed development;
- (c) advice as to how the proposed development would satisfy an identified need;
- (d) details of the applicant's financial and technical capacity to establish the proposed development;
- (e) details of the steps the applicant has taken, or tried to take, to satisfy its obligations under subsection (1);
- (f) all other information the chief executive considers is necessary to assess the application.

(4) The application must be in writing and state the following information—

- (a) the land intended to be entered under the investigator's authority;
- (b) the purpose for which the authority is sought;
- (c) details of the nature of the activities proposed to be conducted on the land;
- (d) the period for which the authority is sought.

(5) The chief executive must advise the affected persons for the land—

- (a) that an application for an investigator's authority has been made for the land; and
- (b) the powers a person given an authority may exercise under this division.

404 Additional information about application

(1) Before deciding the application, the chief executive—

- (a) must consult with the affected persons for the land about the proposed entry to the land; and
- (b) may require the applicant to give additional information about the proposed entry.

(2) The chief executive may reject the application if the applicant fails, without reasonable excuse, to give the additional information within a stated reasonable time of not less than 28 days.

405 Giving investigator's authority

(1) The chief executive may—

- (a) give an investigator's authority, with or without conditions; or
- (b) refuse to give the authority.

(2) If the chief executive refuses to give the investigator's authority, the chief executive must give the applicant written reasons for the refusal.

(3) Without limiting subsection (1)(a), a condition may require lodging a bond or security deposit with the chief executive.

(4) The investigator's authority must be only for the part of the land the chief executive is satisfied is reasonably necessary for conducting the investigations.

406 Investigator's authority

(1) The investigator's authority must be in writing stating the following—

- (a) the land to which it applies;
- (b) the purpose for which it is given;
- (c) when it ends;
- (d) all conditions imposed on the authority.

(2) The investigator's authority authorises the investigator and associated persons of the investigator—

- (a) to enter and re-enter land the subject of the authority for investigating the land's potential and suitability for the development; and
- (b) to the extent reasonably necessary or convenient for the purpose—
 - (i) to do anything on the land; or
 - (ii) to bring anything onto the land; or
 - (iii) to temporarily leave machinery, equipment or other items on the land.

Examples of actions authorised by the investigator's authority—

1. To conduct surveys, investigate and take samples.

2. To clear vegetation, or otherwise disturb the land, to the extent reasonably necessary.
3. To construct temporary access tracks using the land or using materials brought onto the land.

(3) It is declared that—

- (a) the giving of the investigator's authority is not an indication of a commitment or approval by the State, the chief executive or anyone else to any proposal, and in particular, does not commit the State to acquiring land for the development; and
- (b) a person is not an employee or agent of the State only because the person is an investigator.

(4) The investigator's authority does not authorise entering or doing anything to a structure on the land used solely for residential purposes without the permission of the occupier of the land.

(5) The investigator and each associated person of the investigator, must comply with each condition of the authority, unless the investigator or associated person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

407 What investigator must do before land is entered for the first time

(1) Before land is entered for the first time under the investigator's authority, the investigator must give a written notice to the affected persons for the land together with a copy of the authority.

(2) The notice must state the following—

- (a) the investigator has been given the investigator's authority;
- (b) the things the investigator and associated persons of the investigator are authorised to do under the authority;
- (c) a general outline of the things intended to be done on the land, including the construction of any temporary access track;
- (d) the approximate period during which the land is to be entered under the authority;
- (e) the rights of the affected persons under this chapter for the rectification of, and to compensation for, loss or damage suffered because of the investigation;

- (f) the giving of the authority is not an indication of a commitment or approval by the State, the chief executive or anyone else in relation to any proposal, and in particular, does not commit the State to acquiring land for the development.

(3) The investigator or an associated person of the investigator may enter the land only if—

- (a) the affected persons give written consent to the entry; or
- (b) at least 7 days have passed since the notice was given.

408 Investigator to issue associated person with identification

(1) Before the investigator allows an associated person of the investigator to act under the investigator's authority, the investigator must give the associated person an identification document in the approved form.

Maximum penalty—10 penalty units.

(2) The identification document must—

- (a) state the names of the investigator and the person to whom the identification document is given; and
- (b) indicate that, for this Act, the person is associated with the holder of the investigator's authority; and
- (c) state the capacity in which the associated person is an associated person; and
- (d) be signed by or for the investigator; and
- (e) be signed by or for the associated person; and
- (f) state when it ends.

(3) A person who stops being an associated person of an investigator must return the person's identification document to the investigator as soon as practicable, but within 21 days, after the person stops being an associated person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) Subsections (5) and (6) apply if a person who claims to be, or appears to be, an affected person for the land asks an individual who has entered, is entering or is about to enter land under the investigator's authority—

- (a) for identification; or

(b) about the person's authority to enter the land.

(5) If the request is made of an investigator, the investigator must immediately state the investigator's name and show the person a copy of the investigator's authority.

Maximum penalty—10 penalty units.

(6) If the request is made of an associated person of the investigator, the associated person must immediately state his or her name and show the other person the associated person's identification document.

Maximum penalty for subsection (6)—10 penalty units.

409 Pretending to be an investigator or associated person

A person must not pretend to be an investigator or an associated person of an investigator.

Maximum penalty—80 penalty units.

410 Investigator to take care in acting under investigator's authority

The investigator and all associated persons of the investigator—

- (a) must take as much care as is practicable to minimise damage to the land or inconvenience to the affected persons for the land; and
- (b) may do anything necessary or desirable to minimise the damage or inconvenience.

411 Rectification of damage by investigator

(1) An affected person for the land may, by written notice (“**rectification notice**”) given to the investigator, require the investigator, within a reasonable time after the investigator has finished investigating the land under the investigator's authority, to rectify loss or damage suffered by the affected person arising out of—

- (a) the investigator entering the land; or
- (b) use made of the land by the investigator; or
- (c) anything brought onto the land by the investigator; or

(d) anything done or left on the land while the investigator was on the land under, or purportedly under, the investigator's authority.

(2) If the loss or damage mentioned in subsection (1) is not rectified or can not be rectified, the affected person may, by written notice ("**compensation notice**") given to the investigator, claim compensation for the loss or damage not rectified.

(3) A rectification or compensation notice must be given—

- (a) within 1 year after the loss or damage was suffered; or
- (b) at a later time allowed by the Land Court.

(4) The claim for compensation may be made—

- (a) whether or not the act or omission giving rise to the claim was authorised under the investigator's authority; and
- (b) whether or not the investigator took steps to prevent the loss or damage; and
- (c) even though the loss or damage was caused, or contributed to, by an associated person of the investigator.

(5) In subsection (1)—

"**investigator**" includes an associated person of the investigator.

412 Compensation payable by investigator

(1) The investigator must compensate each affected person for the land for the loss or damage the affected person has suffered and that has not been rectified.

(2) The amount of compensation is—

- (a) the amount agreed between the parties; or
- (b) if the parties can not agree on the amount within a reasonable time, the amount decided by the Land Court.

413 Release of bond or security deposit

(1) This section applies if, under a condition of the investigator's authority, a bond or security deposit is required to be lodged with the chief executive.

(2) If an affected person for the land does not give a rectification or compensation notice within the prescribed time, the chief executive may keep the bond or security deposit until 1 year after the investigator's authority expires.

(3) If an affected person for the land gives a rectification or compensation notice within the prescribed time, the chief executive may keep the bond or security deposit until the chief executive is satisfied the damage or loss has been repaired or rectified or any compensation agreed or awarded for the damage or loss has been paid to the affected person.

(4) In this section—

“prescribed time”, for giving a rectification or compensation notice arising out of the entry of land by the investigator, means 1 year after the investigator was last on the land under, or purportedly under, the investigator's authority.

414 Use of bond or security deposit to repair or rectify

(1) This section applies if—

- (a) under a condition of the investigator's authority, a bond or security deposit is required to be lodged with the chief executive; and
- (b) an affected person for the land gives a rectification or compensation notice within the prescribed time; and
- (c) the chief executive is satisfied the damage or loss has not been repaired or rectified or compensation agreed or awarded for the damage or loss has not been paid to the affected person.

(2) The chief executive—

- (a) may use the bond or security deposit to repair or rectify the damage or loss or pay the compensation; and
- (b) must pay the balance, if any, to the investigator.

(3) In this section—

“prescribed time”, for giving a rectification or compensation notice arising out of the entry of land by the investigator, means 1 year after the investigator was last on the land under, or purportedly under, the investigator's authority.

CHAPTER 12—MISCELLANEOUS TRANSPORT INFRASTRUCTURE

PART 1—PRELIMINARY

415 Definitions for ch 12

In this chapter—

“**approval**” means an approval granted under section 420.

“**approval conditions**” see section 423(1).

“**dispute notice**” see section 425(1).

“**intersecting area**” means an area (other than an area of land that is required land) or a thing that—

- (a) intersects required land; and
- (b) is owned, administered, controlled, or managed by a GOC or a local government.

Examples—

- an area of water
- land covered by water
- miscellaneous transport infrastructure works
- a port
- rail corridor land
- a road.

“**licensee**” means the holder of an operational licence.

“**operational licence**” means a licence in force granted—

- (a) under section 418; or
- (b) under another Act, for infrastructure that is miscellaneous transport infrastructure.

“**required land**” means land that has been acquired for miscellaneous transport purposes or an incidental purpose.

“**responsible entity**”, for an intersecting area, means an entity responsible for administering, controlling, or managing the area under any Act.

416 Meaning of “miscellaneous transport infrastructure”

(1) “Miscellaneous transport infrastructure” means—

- (a) infrastructure relating to the transportation, movement, transmission or flow of anything, including, for example, goods, material, substances, matter, particles with or without charge, light, energy, information and anything generated or produced; or
- (b) anything declared under a regulation to be miscellaneous transport infrastructure, whether or not it is infrastructure under paragraph (a).

(2) However, road transport infrastructure, rail transport infrastructure, air transport infrastructure, public marine transport infrastructure and port infrastructure are not miscellaneous transport infrastructure.

(3) Also, busway transport infrastructure and light rail transport infrastructure are not miscellaneous transport infrastructure.

PART 2—OPERATIONAL LICENCES AND APPROVALS FOR LICENSEES

Division 1—Definitions

417 Definition for pt 2

In this part, other than division 2—

“**Minister**” means the Minister administering the *State Development and Public Works Organisation Act 1971*.

Division 2—Granting operational licences

418 Minister may grant operational licence

The Minister may grant to a person a licence to construct, maintain, use or operate stated miscellaneous transport infrastructure on stated conditions.

Division 3—Approvals for licensees for intersecting areas**419 Purpose and scope of div 3**

(1) The purpose of this division is to provide a mechanism for a licensee to obtain an approval from a responsible entity for an intersecting area.

(2) However, this division does not apply to an approval if the approval is required under another Act.

(3) This division applies only for ensuring miscellaneous transport infrastructure can be constructed, maintained, used or operated across, over or under the area.

420 Approvals

(1) A licensee may apply for an approval by a responsible entity to construct, maintain, use or operate miscellaneous transport infrastructure stated in the licensee's operational licence across, over or under an intersecting area.

(2) The application must—

- (a) be written; and
- (b) identify the area and the miscellaneous transport infrastructure; and
- (c) state any other thing prescribed under a regulation.

(3) The entity may grant or refuse the approval.

(4) If the approval is granted, the licensee may, subject to any approval conditions, construct, maintain, use or operate the miscellaneous transport infrastructure identified in the application across, over or under the area.

421 Refusal to grant approval

If an application has been made to a responsible entity and the entity refuses the application, it must give the applicant written notice within 14 days after refusing the application stating—

- (a) the decision; and
- (b) the reasons for the decision; and

- (c) that the applicant may apply in writing to the Minister for the approval.

422 Licensee may apply to Minister if approval not granted

(1) This section applies if—

- (a) an application has been made to a responsible entity for an approval; and
- (b) the entity refuses the application or does not grant the application within 20 business days after it is made.

(2) The applicant may apply in writing to the Minister for the approval.

(3) The Minister may grant or refuse the approval.

(4) The Minister must give the applicant and the entity notice of the granting or refusal.

(5) If the Minister grants the approval, it is taken to have been granted by the entity.

(6) If the Minister decides to grant or refuse the approval, the Minister must prepare a statement of the reasons for the decision for this section.

(7) The statement of reasons must be tabled in the Legislative Assembly within 14 sitting days after the day of the decision.

(8) In preparing the statement of reasons, the Minister must not include matter that is exempt matter.

(9) A failure to comply with subsections (6) to (8) is of no effect.

(10) The *Judicial Review Act 1991*, parts 3 and 4,⁵² do not apply to any decision the Minister makes or fails to make for this section.

(11) In this section—

“exempt matter” means matter defined as exempt matter under the *Freedom of Information Act 1992*, part 3, division 2.⁵³

52 *Judicial Review Act 1991*, parts 3 (Statutory orders of review) and 4 (Reasons for decision)

53 *Freedom of Information Act 1992*, part 3 (Access to documents), division 2 (Exempt matter)

*Division 4—Conditions for approvals***423 Approval conditions**

(1) If a responsible entity or the Minister grants an approval, the entity may impose reasonable conditions for the approval (“**approval conditions**”).

(2) However, a condition may only be imposed within 20 business days of—

- (a) if the approval was granted by the entity—the making of the application to the entity; or
- (b) if the approval was granted by the Minister—the giving of notice of the approval by the Minister to the entity.

(3) An approval condition may, for example, provide for the following—

- (a) reinstating land disturbed by construction;
- (b) installing signs, markings or warning devices about or for the miscellaneous transport infrastructure for which the approval was granted on the intersecting area;
- (c) surveying or siting the infrastructure on the area;
- (d) adding to, altering or replacing the infrastructure, at the applicant’s cost—
 - (i) to ensure the safe operation or use of other infrastructure or works on the area; or
 - (ii) to preserve, promote or protect the environmental condition of the area;
- (e) how the approval may be amended, suspended or cancelled.

424 Notice of approval conditions

If a responsible entity imposes approval conditions, it must give the applicant for the approval written notice within 14 days after imposing the conditions stating—

- (a) the conditions; and

- (b) that the applicant may appeal against the conditions to an arbitrator; and
- (c) that an appeal may be started by giving the entity a written notice of dispute within 20 business days after receiving the notice of the conditions.

Division 5—Arbitration of approval conditions

425 Notice of dispute

(1) If a responsible entity imposes approval conditions, the applicant for the approval may, by written notice to the entity (a “**dispute notice**”), dispute the reasonableness of the conditions.

(2) However, if notice of the conditions has been given to the applicant under section 424, a dispute notice may only be given within 20 business days after the giving of the notice of the conditions.

426 Appointment of arbitrator

(1) Within 10 business days after the giving of a dispute notice, the responsible entity and the applicant for approval must join in appointing an independent arbitrator to resolve the dispute.

(2) If the entity and the applicant do not appoint an arbitrator within the 10 business days, the following persons may, on the application of the applicant or entity, appoint the arbitrator—

- (a) if the entity is a local government—the Minister and the Minister administering the *Integrated Planning Act 1997*, acting jointly;
- (b) if the entity is not a local government—the Minister.

(3) However, each Minister may nominate another person to exercise the power under subsection (2).

427 Arbitrator’s functions

The arbitrator must—

- (a) resolve the dispute by deciding what are reasonable conditions for the approval; and

- (b) give the entity and the applicant notice of, and reasons for, the decision.

428 Arbitrator's powers

(1) In resolving the dispute, the arbitrator may—

- (a) confirm the approval conditions imposed by the responsible entity; or
- (b) amend the conditions; or
- (c) set aside the conditions and substitute other conditions.

(2) The arbitrator may exercise the powers of an arbitrator under the *Commercial Arbitration Act 1990*.

429 Hearing procedures

(1) An arbitration must be by way of rehearing, unaffected by the responsible entity's decision on the approval conditions.

(2) Unless this division or a regulation made under schedule 1 otherwise provides, the practice and procedure for an arbitration follow the practice and procedure for an arbitration under the *Commercial Arbitration Act 1990*.

430 Effect of arbitrator's decisions

(1) An arbitrator's decision under this division is final.

(2) The entity and the applicant may not apply for review of, or appeal against, the decision.

(3) The approval conditions decided by the arbitrator are, other than for section 424⁵⁴ and this division, taken to be the approval conditions imposed by the responsible entity.

54 Section 424 (Notice of approval conditions)

Division 6—Miscellaneous**431 Miscellaneous transport infrastructure remains property of licensee**

(1) This section applies if—

- (a) a licensee constructs, maintains, uses or operates miscellaneous transport infrastructure across, over or under an intersecting area; and
- (b) the licensee has obtained an approval from each responsible entity for the area.

(2) Subject to a condition of the licensee's operational licence or an agreement between the licensee and the State, the infrastructure remains the licensee's property despite—

- (a) the attaching of the infrastructure to the area; or
- (b) an approval condition.

(3) However, an approval condition may provide for—

- (a) if the State agrees—the disposal of the infrastructure to the State on reasonable terms if the licensee no longer holds an operational licence for the infrastructure; or
- (b) if the State and licensee agree—someone else to own or acquire the infrastructure.

432 Compensation to responsible entity from licensee

(1) This section applies if—

- (a) a licensee constructs, maintains, uses or operates miscellaneous transport infrastructure across, over or under an intersecting area; and
- (b) a responsible entity for the area incurs a cost, damage, liability or loss because of the existence, construction, maintenance, use or operation of the infrastructure.

(2) The licensee must pay the entity the amount of the cost, damage, loss or liability.

(3) The entity may claim the amount in a proceeding in a court with jurisdiction for the amount claimed.

PART 3—AUTHORITIES TO OCCUPY AND USE LAND

433 Temporary use and occupation of land

To carry out miscellaneous transport infrastructure works, the chief executive, or anyone authorised in writing by the chief executive, may temporarily occupy and use land, including roads, and do anything on the land that is necessary or convenient.

434 Notice of entry or permission to enter

(1) If a person proposes to occupy or use land under this chapter, the person must—

- (a) give at least 3 days written notice to the owner or occupier of the land; or
- (b) obtain the written permission of the owner or occupier to the occupation or use.

(2) The notice must state—

- (a) the miscellaneous transport infrastructure works to be carried out; and
- (b) the use proposed to be made of the land; and
- (c) details of the things proposed to be done on the land; and
- (d) an approximate period when the occupation or use is expected to continue.

(3) A notice may be given under subsection (1) in relation to land even though it is proposed to resume the land for miscellaneous transport infrastructure.

(4) After the end of 3 days after service of a notice under subsection (1), or with the permission of the owner or occupier, the land may be entered and the miscellaneous transport infrastructure works specified in the notice carried out.

(5) If a person proposes to occupy or use land to carry out urgent remedial work to miscellaneous transport infrastructure or miscellaneous transport infrastructure works, subsection (1) does not apply but the person must, if practicable, notify the owner or occupier of the land orally before entering the land.

435 Compensation for physical damage from entry etc.

(1) An owner of land that is entered, occupied or used under this chapter may give a written notice to the chief executive claiming compensation for physical damage caused by the entry, occupation or use or for the taking or consumption of materials.

(2) Compensation is not payable unless a claim is received by the chief executive within 1 year after occupation or use has ended.

(3) However, the chief executive may allow a claim to be made at a later time.

(4) Compensation awarded under this section must not be more than the compensation that would have been awarded if the land had been acquired.

**PART 4—POWERS OF CHIEF EXECUTIVE OVER
REQUIRED LAND****436 Chief executive may grant interests in land**

(1) The chief executive may, for the State, grant or dispose of an interest in required land used, or proposed to be used, for miscellaneous transport infrastructure to—

- (a) a licensee; or
- (b) someone else authorised under another Act to construct, maintain, use or operate miscellaneous transport infrastructure.

Example of an interest in land under subsection (1)—

A licence or right to use or occupy required land.

(2) The chief executive may grant the interest on conditions, including, for example, a condition that the interest ends if the person ceases to be a person entitled to be granted the interest.

(3) This section has effect despite the *Acquisition of Land Act 1967*.

PART 5—MISCELLANEOUS

437 Effect of chapter on other Acts

This chapter has effect despite a provision of another Act about—

- (a) constructing miscellaneous transport infrastructure; or
- (b) acquiring interests in land, or doing anything else, to enable the construction of miscellaneous transport infrastructure.

CHAPTER 13—FUNCTION OF QUEENSLAND RAIL

438 Function

(1) The function of Queensland Rail is to provide comprehensive transport services and services ancillary to those services, whether in or outside Queensland or Australia.

(2) Without limiting subsection (1), the function includes—

- (a) the provision of passenger and freight transport services; and
- (b) the provision of consultancy and training services relating to transport services; and
- (c) establishing, maintaining and arranging for the provision of transport infrastructure; and
- (d) doing anything likely to complement or enhance the function or something mentioned in paragraphs (a) to (c).

(3) Queensland Rail is taken to have had the function from when it became a government owned corporation.

CHAPTER 14—TRANSPORTING DANGEROUS GOODS BY RAIL

PART 1—INTRODUCTORY

439 Purposes of ch 14

The purposes of this chapter are—

- (a) to reduce risk arising from transporting dangerous goods by rail; and
- (b) to help create a substantially uniform national rail transport law about dangerous goods; and
- (c) to promote consistency between the regulation of the transport of dangerous goods by rail and by other modes of transport.

440 Application of ch 14

(1) This chapter—

- (a) applies only to the transportation of dangerous goods by rail; and
- (b) applies in addition to, and does not limit, any other provision of this Act or any other Act.

(2) However, this chapter does not apply to any of the following—

- (a) the transportation of radioactive substances under the *Radiation Safety Act 1999*;
- (b) the transportation of explosives under the *Explosives Act 1999*;
- (c) the transfer, under the *Gas (Residual Provisions) Act 1965*, of gas within the meaning of that Act from a rail tank vehicle or bulk container;
- (d) dangerous goods in a container that is—
 - (i) designed to form part of, and forms part of, the fuel system of—
 - (A) a rail vehicle's engine; or
 - (B) another part of a rail vehicle's propulsion equipment;
 - or

- (C) an engine that is part of a rail vehicle's refrigeration system; or
- (D) another auxiliary engine of a rail vehicle; or
- (ii) designed as a fuel storage container for a fuel burning appliance, or an engine, that is—
 - (A) built into a rail vehicle; or
 - (B) designed to be attached to a rail vehicle; or
 - (C) part of a refrigeration system attached to a freight container; or
 - (D) prescribed under a regulation;
- (e) a battery installed in a rail vehicle or on its load for the purpose of operating a function of the vehicle or of equipment relating to the load;
- (f) a fire extinguisher fitted to or carried in a rail vehicle to be used for the protection of the vehicle or its load;
- (g) equipment installed in a rail vehicle to provide a safety or protective system for an occupant of the vehicle;
- (h) compressed air, compressed oxygen or oxygen releasing chemicals that are part of self contained breathing or rebreathing apparatus for use by a rail vehicle's driver.

441 Ch 14 binds all persons

(1) This chapter binds all persons, including every Queensland government entity, and, so far as the legislative power of the Parliament permits, every government entity of the Commonwealth or of another State.

(2) In this section—

“government entity” includes—

- (a) the State, the Commonwealth or another State; and
- (b) an instrumentality, agent, authority, company, GOC or entity of the State, the Commonwealth or another State.

PART 2—REGULATIONS

442 Regulations about dangerous goods

(1) A regulation may prescribe matters about the transportation of dangerous goods by rail, including for example, the following matters—

- (a) types and categories of dangerous goods;
- (b) ways of deciding types and categories of dangerous goods;
- (c) deciding which goods are—
 - (i) dangerous; or
 - (ii) dangerous goods of a particular type; or
 - (iii) too dangerous to be transported by rail; or
 - (iv) too dangerous to be transported in bulk by rail;
- (d) the analysis and testing of dangerous goods;
- (e) the marking of packages, and unit loads, containing dangerous goods;
- (f) the placarding of containers and rail vehicles containing dangerous goods;
- (g) containers, packaging equipment and other items to be used for transporting dangerous goods;
- (h) the manufacture of rail vehicles and containers for use in transporting dangerous goods;
- (i) the loading of dangerous goods for, and the unloading of dangerous goods after, their transportation;
- (j) deciding routes along which, the areas in which and the times during which, dangerous goods may or may not be transported;
- (k) procedures for transporting dangerous goods, including—
 - (i) the quantities and circumstances in which dangerous goods may be transported; and
 - (ii) safety procedures and equipment;
- (l) the approval of packages, containers, equipment and other items used for transporting dangerous goods;

- (m) the approval of processes to be carried out when transporting dangerous goods;
 - (n) other approvals;
 - (o) documents to be prepared or kept by persons involved in transporting dangerous goods and the approval of alternative documentation;
 - (p) obligations arising, and procedures to be followed, in a dangerous situation;
 - (q) the training and qualifications required of persons involved in, and the approval of training courses and qualifications relating to involvement in, transporting dangerous goods.
- (2) Without limiting subsection (1), a regulation may provide—
- (a) for the granting or renewing of, or refusing to grant or renew, an approval or exemption; or
 - (b) grounds for amending, suspending or cancelling an approval or exemption.
- (3) A regulation may allow the chief executive to make provision about a matter mentioned in subsection (1)(j).
- (4) A decision about a matter mentioned in subsection (1)(c), other than an approval, may only be made by regulation.

PART 3—APPROVALS AND EXEMPTIONS

Division 1—Exemptions

443 Exemptions

(1) A person, or a representative of a class of person, may apply to the chief executive for an exemption from complying with a provision of a regulation about transporting dangerous goods by rail.

(2) The chief executive may, on an application under subsection (1) or on the chief executive's own initiative, exempt a person or a class of person from complying with the provision if satisfied—

- (a) it is not reasonably practicable for the person or class of person to comply with the provision; and
- (b) granting the exemption—
 - (i) would not be likely to create a risk of a dangerous situation, greater than would be the case if the person or class of person did comply; and
 - (ii) would not cause unnecessary administrative or enforcement difficulties, particularly about maintaining national substantially uniform rail transport laws about dangerous goods.

(3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

(4) The chief executive must, as soon as is practicable after giving a class exemption, give notice of the exemption in the gazette.

(5) The notice must state the following—

- (a) the class of person to whom the exemption applies;
- (b) the provision of the regulation from which the class is exempt;
- (c) the dangerous goods to which the exemption applies;
- (d) the time for which the exemption applies;
- (e) the conditions, if any, to which the exemption is subject;
- (f) the geographical area in which the exemption applies.

(6) The *Statutory Instruments Act 1992*, sections 24 and 25 apply to an exemption as if it were a statutory instrument.

(7) A regulation may regulate the giving of an exemption under this section.

Division 2—Amending, suspending or cancelling approval or exemption

444 Grounds for amending, suspending or cancelling approval or exemption

(1) It is a ground for amending, suspending or cancelling an approval or exemption if the approval or exemption was—

- (a) granted because of a document or representation that is false or misleading; or
- (b) obtained or made in another improper way.

(2) It is a ground for amending, suspending or cancelling an approval or exemption if the person, or 1 or more of the persons, to whom the approval or exemption applies—

- (a) has contravened a condition of the approval or exemption; or
- (b) has been convicted of an offence against this chapter or a law of another State or the Commonwealth about transporting dangerous goods by rail.

445 What chief executive must do before taking proposed action, other than for class exemption

(1) This section applies if the chief executive proposes to amend, suspend or cancel an approval or exemption, other than a class exemption (the “**proposed action**”).

(2) Before taking the proposed action, the chief executive must give the holder of the approval or exemption written notice stating—

- (a) the proposed action; and
- (b) the grounds for the proposed action; and
- (c) an outline of the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is to amend the approval or exemption, including a condition of the approval or exemption—the proposed amendment; and
- (e) if the proposed action is to suspend the approval or exemption—the proposed suspension period; and
- (f) an invitation to the holder of the approval or exemption to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

446 What chief executive must do before taking proposed action for class exemption

(1) This section applies if the chief executive proposes to amend, suspend or cancel a class exemption (the “**proposed action**”).

(2) Before taking the proposed action, the chief executive must give written notice to the class representative for the exemption and in the gazette stating—

- (a) the proposed action; and
- (b) the grounds for the proposed action; and
- (c) an outline of the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is to amend the exemption, including a condition of the exemption—the proposed amendment; and
- (e) if the proposed action is to suspend the exemption—the proposed suspension period; and
- (f) an invitation to any member of the class for the exemption to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

447 Decision on proposed action

(1) If, after considering any written representations made within the time allowed under section 445 or 446, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action was to amend the approval or exemption—amend the approval or exemption; or
- (b) if the proposed action was to suspend the approval or exemption—suspend the approval or exemption for no longer than the period stated in the notice under section 445 or 446; or
- (c) if the proposed action was to cancel the approval or exemption—amend or cancel the approval or exemption, or suspend the approval or exemption for a period.

(2) The chief executive must give written notice of the chief executive’s decision to—

- (a) for an approval or exemption, other than a class exemption—the holder; or

(b) for a class exemption—the class representative for the exemption.

(3) If the chief executive decides to amend, suspend or cancel the approval or exemption, the notice must state the reasons for the decision and be accompanied by an information notice.

(4) The decision takes effect on the day notice is given under subsection (2) or a later day stated in the notice.

448 Sections 445–447 do not apply to beneficial or clerical amendment

(1) Sections 445 to 447 do not apply—

(a) if the chief executive proposes to amend an approval or exemption only—

(i) for a formal or clerical reason; or

(ii) in another way that does not adversely affect the interests of any person; or

(b) if the chief executive proposes to amend an approval or exemption in another way or cancel it and the holder has asked the chief executive to take the proposed action.

(2) The chief executive may amend an approval or exemption in a way mentioned in subsection (1) by written notice to—

(a) for an approval or exemption, other than a class exemption—the holder; or

(b) for a class exemption—the class representative for the exemption.

449 Immediate suspension in the public interest

(1) Despite sections 445 and 446, this section applies if the chief executive considers it is necessary in the interest of public safety to immediately suspend an approval or exemption.

(2) The chief executive may, by written notice to the holder of the approval or exemption, other than a class exemption, immediately suspend the approval or exemption until the earlier of the following—

(a) a notice is given to the holder under section 447(2); or

(b) the end of 56 days after the notice is given to the holder.

(3) The chief executive may, by written notice to the class representative for a class exemption, immediately suspend the exemption until the earlier of the following—

- (a) a notice is given for the exemption under section 447(2); or
- (b) the end of 56 days after the notice is given to the holder.

(4) If the chief executive suspends a class exemption, the chief executive must give notice of the suspension in the gazette.

(5) A notice under subsection (2) or (3) must state the reasons for the decision and be accompanied by an information notice.

PART 4—OFFENCES

450 Goods too dangerous to be transported

A person must not transport by rail goods prescribed under a regulation as being too dangerous to transport by rail if the person knows, or reasonably ought to know, the goods are too dangerous to be transported by rail.

Maximum penalty—665 penalty units.

451 Duties when transporting dangerous goods

(1) A person involved in transporting dangerous goods by rail must ensure, as far as is practicable, that the goods are transported safely.

Maximum penalty—665 penalty units.

(2) A person involved in transporting dangerous goods by rail must not contravene this chapter in circumstances in which the person knew, or ought reasonably to have known, that the contravention would be likely to endanger the safety of another person or of property or the environment.

Maximum penalty—665 penalty units.

(3) This section applies in addition to, and does not limit, any other provision of this chapter.

452 Prohibition on involvement in the transportation of dangerous goods by rail

(1) A court convicting a person of an offence against this chapter may order that the person be prohibited, for a stated period, from involvement in the transportation of dangerous goods by rail after having regard to the following matters—

- (a) the person's record in the transportation of dangerous goods by rail in Australia;
- (b) the person's convictions under Queensland law, or a law of another State or the Commonwealth relating to dangerous goods;
- (c) the circumstances surrounding the commission of the offence;
- (d) any other matters the court considers appropriate.

(2) A person must not contravene an order made under subsection (1).

Maximum penalty—665 penalty units or 2 years imprisonment.

(3) Subsection (1) does not limit any other penalty the court may impose for the offence.

(4) In this section—

“involvement” in the transportation of dangerous goods by rail includes the following—

- (a) importing, or arranging for the importation of, dangerous goods into Australia;
- (b) packing or labelling dangerous goods for transportation by rail;
- (c) consigning dangerous goods for transportation by rail;
- (d) loading dangerous goods onto a rail vehicle or into a container that is to be put on a rail vehicle;
- (e) unloading dangerous goods that have been transported by rail;
- (f) undertaking or being responsible for the transportation of dangerous goods by rail, other than as an employee or sub-contractor;
- (g) being a consignee of dangerous goods transported by rail;
- (h) being involved as a director, secretary or manager of a corporation or other person who takes part in the management of a corporation that takes part in an activity mentioned in paragraphs (a) to (g).

PART 5—RECOVERY OF COSTS AND FORFEITURE

453 Forfeiture on conviction

(1) A court convicting a person of an offence against this chapter may order the forfeiture to the State of—

- (a) anything used to commit the offence; or
- (b) anything else the subject of the offence.

(2) The court may make the order—

- (a) whether or not the thing has been seized; and
- (b) if the thing has been seized, whether or not the thing has been returned to its owner.

(3) The court may make any order to enforce the forfeiture that it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

454 Dealing with forfeited things etc.

(1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.

(3) The chief executive must not deal with the thing until any review of, or appeal against, the decision to forfeit the thing is decided.

455 Recovery of costs from convicted person

(1) A court convicting a person of an offence against this chapter may order the person to pay to the State the costs reasonably incurred by the State in prosecuting the offence, including the cost of testing, transporting, storing and disposing of dangerous goods and other evidence.

(2) An amount ordered to be paid under subsection (1) is a debt owing to the State.

(3) A court may make an order under subsection (1) in addition to any other order the court may make.

456 Recovery of costs of government action

(1) This section applies if any of the following events happen in relation to the transportation of dangerous goods by rail—

- (a) a dangerous situation;
- (b) an incident wholly or partly constituted by or arising from—
 - (i) the escape of dangerous goods; or
 - (ii) an explosion or fire involving dangerous goods; or
- (c) an incident involving the risk of the escape of dangerous goods or an explosion or fire involving dangerous goods.

(2) If a government entity incurs costs because of the event, the entity may recover the costs reasonably incurred in dealing with the event as a debt owing to the entity.

(3) The costs are recoverable as a joint and several liability from the following persons—

- (a) the person who owned the dangerous goods when the event happened;
- (b) the person who had possession or control of the dangerous goods when the event happened;
- (c) the person who caused the event;
- (d) the person responsible (other than as an employee, agent or subcontractor of someone else) for the transportation of the dangerous goods by rail.

(4) However, costs are not recoverable from a person—

- (a) who does not incur civil liability because of section 458; or
- (b) who establishes that—
 - (i) the event was primarily caused by someone else; or
 - (ii) the person could not, exercising reasonable care, have prevented the event; or
 - (iii) the event was not attributable to the person or to an employee, agent or subcontractor of the person.

(5) This section does not limit the powers a government entity has apart from this chapter.

PART 6—MISCELLANEOUS

457 Certificates and documents

(1) A certificate purporting to be signed by the chief executive and stating that a stated person held or did not hold a stated approval or exemption under this chapter on a stated day or throughout a stated period is evidence of the matters stated.

(2) A court may admit into evidence a copy of a document made by an authorised person under this chapter.

458 Helping in accidents or emergencies

(1) This section applies if a person, other than an official—

- (a) helps, or attempts to help, in a situation in which an accident or emergency involving dangerous goods happens or is likely to happen; and
- (b) the help, or attempt to help, is given—
 - (i) honestly and without negligence; and
 - (ii) without any fee, charge or other reward.

(2) The person does not incur civil liability for helping or attempting to help.

(3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.

(4) This section does not apply to a person whose act or omission wholly or partly caused the accident, emergency or likely accident or emergency.

(5) In this section—

“**official**” means a person who is, or is acting under the control of, an authorised person under the *Transport Operations (Passenger Transport) Act 1994*.

CHAPTER 15—PUBLIC MARINE TRANSPORT INFRASTRUCTURE

PART 1—PUBLIC MARINE FACILITIES

459 Appointment of manager of public marine facility

(1) The Governor in Council may, by regulation, appoint a person (the “**manager**”) to manage a public marine facility.

Examples of persons who may be appointed—

A local government, a port authority, the chief executive or the person who is for the time being the manager of a resort.

(2) The appointment may only be made if the person consents to the appointment.

(3) The appointment may be on conditions stated under the regulation, including the payment of a fee to the chief executive for moorings in the facility.

(4) Under a regulation, a condition may be changed if the manager consents to the change.

(5) However, the consent of the manager is not required to change the fee payable under a regulation to the chief executive for moorings in the facility.

(6) Subsection (3) does not limit the power to impose, under a regulation, fees for moorings in a public marine facility, whether or not a manager has been appointed to manage the facility.

460 Manager’s responsibility for maintenance and injuries etc.

(1) The manager is responsible for maintaining the public marine facility in good condition to a standard appropriate to its use.

(2) The facility is taken, for the purposes of all adverse civil proceedings in relation to death, injury, damage or loss, to be solely owned, occupied and under the management, control and responsibility of the manager.

(3) However, subsection (2) does not apply to the extent any death, injury, damage or loss is attributable to a structural defect in the facility unless—

- (a) the defect is attributable to the manager's failure to—
 - (i) properly construct, extend or alter the facility in accordance with a sanction under a provision continuing to have effect under section 236;⁵⁵ or
 - (ii) properly maintain the facility; or
- (b) the defect or its continuation is attributable to a contravention by the manager of the conditions of the manager's appointment.

461 Management by chief executive

(1) If, apart from this section, there is no current manager of a public marine facility, the chief executive is taken to be the manager of the facility until the chief executive or someone else is appointed as the manager under section 459.

(2) If the chief executive is the manager of a public marine facility, the chief executive—

- (a) has any powers, conferred under a regulation, to limit or prohibit the use of the facility; and
- (b) may exercise any other of the chief executive's powers, and do anything the chief executive considers necessary or convenient, for the facility's effective and efficient management.

(3) This section does not limit a power the chief executive has apart from this section.

462 Management by local government

If a local government is the manager of a public marine facility, the local government—

- (a) has, for the facility, all the functions, powers and obligations of a local government under the *Local Government Act 1993*; and
- (b) may make local laws and do anything it considers necessary or convenient for the facility's effective and efficient management.

⁵⁵ Section 236 (Continuation of certain provisions of Harbours Act requiring approval for certain matters) was repealed on 20 October 2003.

463 Management by port authority

If a port authority is the manager of a public marine facility, the port authority—

- (a) has, for the facility, all the functions, powers and obligations of a port authority under chapter 7 or the *Government Owned Corporations Act 1993*; and
- (b) may exercise its powers, and do anything it considers necessary or convenient for the facility's effective and efficient management.

464 Management by another person

If the manager of a public marine facility is not the chief executive, a local government or a port authority, the manager's management powers include any power, conferred under a regulation, to limit or prohibit the use of the facility.

465 Exercise of manager's powers to be consistent with conditions

Anything done by a manager under sections 461 to 464 must be consistent with any conditions imposed on the manager's appointment.

466 Fees

(1) The manager of a public marine facility may impose fees payable to the manager for the use of the facility, whether as a condition of an approval to use the facility or otherwise.

(2) The fee may, for example, be imposed by reference to—

- (a) ships using the facility; or
- (b) goods or passengers loaded, unloaded or transhipped to or from ships using the facility; or
- (c) vehicular access to the facility.

(3) However, a fee may not be imposed for the genuine, transient private recreational use of a boat ramp, jetty, landing or pontoon.

Example of transient use—

Loading fishing gear onto a ship that only takes 15 minutes.

(4) Also, if the manager is—

- (a) the chief executive—the amount of the fee must be prescribed under a regulation; and
- (b) a local government—the amount of the fee must be prescribed under a local law; and
- (c) a port authority—the amount of the fee must be fixed by a resolution of the board of the port authority.

(5) A manager, other than the chief executive,⁵⁶ who imposes a fee under this section may recover the fee as a debt owing to the manager.

(6) This section does not limit the powers a manager has apart from this section.

467 When manager may resign

A manager may resign with the consent of the Governor in Council.

468 Removal of improvements added by manager

(1) If a manager resigns under section 467 or the manager's appointment is revoked, the manager may, within the next 3 months, remove any improvements to the facility added by the manager that do not form an integral part of the facility.

(2) Any of those improvements not removed within the 3 months then become the State's property.

(3) This section does not apply to improvements that were funded by the State or intended to become State-owned under an agreement between the State and the manager or under the conditions of the manager's appointment.

469 Regulation prevails over action taken by a manager under this part

(1) If there is any inconsistency between a regulation and action taken under this part by a manager, the regulation prevails to the extent of the inconsistency.

⁵⁶ For the recovery of fees payable to the chief executive see section 476.

Example—

A regulation about the management of public marine facilities prevails over a local law made for the purposes of this part to the extent they are inconsistent.

(2) Subsection (1) applies whether the action was taken before or after the regulation.

PART 2—MANAGEMENT OF WATERWAYS

470 Object of pt 2

(1) This part recognises that particular waterways require a system of regulation to balance demands on the use, by water traffic, of the waterways and associated infrastructure.

(2) The object of this part is to promote the overall effective and efficient use of waterways for transport by establishing a management regime that—

- (a) is consistent with the objectives of other transport laws; and
- (b) promotes community input; and
- (c) supplements other relevant laws; and
- (d) reflects a coordinated approach to meeting community transport needs.

(3) To achieve the object, particular regard must be had to—

- (a) alternative means that do not involve regulation through waterway transport management plans; and
- (b) transport infrastructure needs; and
- (c) the need to facilitate both recreational and commercial use of waterways; and
- (d) the impact of proposed waterway transport management plans on community transport needs.

471 Functions of chief executive under pt 2

The chief executive has the following functions under this part—

- (a) to consult with public authorities, industry, interested groups and persons, and the public;
- (b) to assess current and future demands of water traffic and for the use of waterways;
- (c) to plan for the effective and efficient management of—
 - (i) water traffic and associated infrastructure; and
 - (ii) the use of waterways;
- (d) to prepare proposals for transport management plans under this part;
- (e) to make recommendations to the Minister for this part.

472 Waterway transport management plan

(1) The Minister may make a transport management plan under this Act for an area (a “**waterway transport management plan**”).

(2) A waterway transport management plan is subordinate legislation.

(3) A waterway transport management plan is not effective until it is approved by the Governor in Council.

(4) A waterway transport management plan applies to—

- (a) waters within the area described in the waterway transport management plan; and
- (b) watercraft infrastructure specified in the plan; and
- (c) the airspace above the area to a height above the surface specified in the plan.

473 Contents of a waterway transport management plan

A waterway transport management plan may provide for a matter mentioned in schedule 2⁵⁷ or a matter about which a regulation may be made.

57 Schedule 2 (Subject matter for waterway transport management plans)

474 Notice of draft waterway transport management plan

(1) The chief executive must give public notice of a draft waterway transport management plan.

(2) The notice must be published—

- (a) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and
- (b) if the waterway transport management plan applies only to a particular area of the State—in a newspaper circulating generally in the area.

(3) The notice must state the following—

- (a) the addresses where copies of the draft waterway transport management plan may be inspected and, on payment of the fee prescribed by regulation, purchased;
- (b) an invitation for submissions on the draft plan from public authorities, industry, interested groups and persons, and the public;
- (c) a day, not earlier than 1 month from the first publication of a notice under subsection (2)(a), by which submissions may be made to the chief executive.

(4) The chief executive must consider all submissions made by that day.

(5) This section does not apply if the draft deals only with—

- (a) a minor error; or
- (b) an amendment of a fee or levy consistent with announced government policy.

(6) In this section—

“minor error” includes—

- (a) a typographical error; and
- (b) a grammatical error; and
- (c) an error of punctuation; and
- (d) an error in cross-referencing to a provision of a law.

475 Other laws prevail over waterway transport management plan

(1) If there is any inconsistency between a waterway transport management plan and another law the other law prevails to the extent of the inconsistency.

(2) Subsection (1) applies whether the waterway transport management plan was made before or after the other law.

(3) In this section—

“**another law**” means any subordinate legislation and action taken under part 1.

CHAPTER 16—GENERAL PROVISIONS**476 Amounts payable to chief executive are debts owing to the State**

An amount payable by a person to the chief executive under this Act or the *Integrated Planning Act 1997* is a debt owing to the State.

477 Power to require information from local governments

(1) The chief executive may, by written notice given to a local government, require that the local government give to the chief executive, or to a specified person, information on a particular issue relevant to the discharge of functions or the exercise of powers under this Act or the *Integrated Planning Act 1997*.

(2) The notice must specify a reasonable time within which the notice is to be complied with and may specify the way in which it is to be complied with.

(3) The local government must comply with the notice.

(4) However, the local government may appeal to the Minister against the notice and, if the local government appeals, the local government only has to comply with the notice if, and to the extent that, the Minister directs.

478 Conduct of company directors, employees or agents

(1) In this section—

“engaging” in conduct includes failing to engage in conduct.

“representative” means—

- (a) in relation to a corporation—an executive officer, employee or agent of the corporation; or
- (b) in relation to an individual—an employee or agent of the individual.

“state of mind” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

(2) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a corporation about particular conduct, it is sufficient to show—

- (a) the conduct was engaged in by a representative of the corporation within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

(3) Conduct engaged in on behalf of a corporation by a representative of the corporation within the scope of the representative’s actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the corporation unless the corporation establishes it took reasonable precautions and exercised proper diligence to avoid the conduct.

(4) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an individual about particular conduct, it is sufficient to show—

- (a) the conduct was engaged in by a representative of the individual within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

(5) Conduct engaged in on behalf of an individual by a representative of the individual within the scope of the representative’s actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the individual unless the individual establishes the individual took reasonable precautions and exercised proper diligence to avoid the conduct.

479 Approval of forms

The chief executive may approve forms for use under this Act.

480 Disposal of fees, penalties etc.

(1) Fees or other amounts received or recovered under this Act in relation to the operations of a GOC, or a local government under chapter 15, are to be paid to the GOC or local government.

(2) A penalty received or recovered in relation to the operations of a GOC for an infringement notice offence under the *State Penalties Enforcement Act 1999* concerning a vehicle parking or stopping offence under this Act is to be paid to the GOC.

(3) To remove doubt, it is declared that a penalty received or recovered in relation to the operations of a local government for an offence under a local law authorised by chapter 15 is to be paid to the local government.

(4) The following amounts are controlled receipts for the purpose of the *Financial Administration and Audit Act 1977*—

- (a) a fee paid to the chief executive under a regulation mentioned in section 459(3) or 466(4)(a);⁵⁸
- (b) a levy paid to the chief executive under a regulation mentioned in schedule 1, item 21.

(5) A declared amount received or recovered by the chief executive is to be retained by the chief executive and not paid into the consolidated fund.

(6) Fees or other amounts under section 466 received or recovered by a manager of a public marine facility are to be retained by the manager and not paid into the consolidated fund.

(7) All other fees, penalties and other amounts received or recovered under this Act are to be paid to the consolidated fund.

(8) In this section—

“**declared amount**” means any of the following—

- (a) a fee or charge under section 79(2);
- (b) a fee under section 459(3);
- (c) a levy under schedule 1, item 21.

58 Section 459 (Appointment of manager of public marine facility) or 466 (Fees)

481 No need to prove appointments

In a proceeding for an offence against this Act, there is no need to prove the appointment of a person who is any of the following—

- (a) an authorised person;
- (d) a rail safety officer;
- (e) an authorised person, or officer, appointed under a regulation as an authorised person, or officer, relating to a matter as stated in the regulation.

482 Prosecutions for offences committed while travelling on a railway

(1) This section applies to an offence against this Act committed by a person while the person was travelling on a railway.

(2) A complaint for the offence may be heard at a place appointed for holding Magistrates Courts within any of the districts through which the person travelled on the railway.

(3) This section has effect despite, but does not limit, the *Justices Act 1886*, section 139.⁵⁹

483 Proceedings for offences

(1) An offence against this Act is a summary offence.

(2) A proceeding for an offence must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

484 Attempts to commit offences

(1) A person must not attempt to commit an offence against this Act.
Maximum penalty—half the maximum penalty for committing the offence.

(2) The Criminal Code, section 4 (Attempts to commit offences) applies to subsection (1).

⁵⁹ *Justices Act 1886*, section 139 (Where summary cases to be heard)

485 Review of and appeals against decisions

(1) A person whose interests are affected by a decision (the “**original decision**”) described in schedule 3 may ask the chief executive to review the decision.

(2) The person is entitled to receive a statement of reasons for the original decision whether or not the provision of the Act under which the decision is made requires that the person be given a statement of reasons for the decision.

(3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—

(a) applies to the review; and

(b) provides—

(i) for the procedure for applying for the review and the way it is to be carried out; and

(ii) that the original decision may be stayed by the person by applying to the court mentioned in subsection (4).

(4) Also, after the chief executive confirms or amends the original decision or substitutes another decision, the person may appeal against the confirmed, amended or substituted decision (the “**reviewed decision**”) to the court stated in schedule 3.

(5) The *Transport Planning and Coordination Act 1994*, part 5, division 3—

(a) applies to the appeal; and

(b) provides—

(i) for the procedure for the appeal and the way it is to be disposed of; and

(ii) that the reviewed decision may be stayed by the person by applying to the court mentioned in subsection (4).

486 Application of Freedom of Information Act and Judicial Review Act

(1) The *Freedom of Information Act 1992* does not apply to a document received or brought into existence by a transport GOC in carrying out its excluded activities.

(2) The *Judicial Review Act 1991* does not apply to a decision of a transport GOC made in carrying out its excluded activities.

(3) A regulation may declare the activities of a transport GOC that are taken to be, or are taken not to be, activities conducted on a commercial basis.

(4) In this section—

“**commercial activities**” means activities conducted on a commercial basis.

“**community service obligations**” has the same meaning as in the *Government Owned Corporations Act 1993*.

“**excluded activities**” means—

- (a) commercial activities; or
- (b) community service obligations prescribed under a regulation.

“**transport GOC**” means a GOC whose functions relate mainly to transport.

487 Altering watercourse to adversely affect transport route

(1) A person must not, without lawful excuse, alter a watercourse in a way that adversely affects a transport route.

Maximum penalty—40 penalty units.

(2) If the chief executive considers that water from a watercourse has collected or is likely to collect, and obstruct or be likely to obstruct, traffic on a transport route, the chief executive may—

- (a) under section 35, 164 or 298,⁶⁰ enter the land on which the watercourse is situated; and
- (b) take the action that the chief executive considers necessary or desirable to reduce or prevent the collection of water.

(3) Before exercising the powers under subsection (2), the chief executive may, by written notice, require the owner of the land on which the watercourse is situated to take the action that the chief executive

⁶⁰ Section 35 (Temporary occupation and use of land), 164 (Entry to land by notice or with approval) or 298 (Authority to enter or temporarily occupy or use land)

considers necessary or desirable to reduce or prevent the collection of water.

(4) The owner must comply with the notice, unless the owner has a reasonable excuse.

Maximum penalty—200 penalty units.

(5) If the owner fails to comply with the notice, the chief executive may exercise the powers mentioned in subsection (2).

(6) The owner is liable to pay the chief executive the costs incurred because of the exercise of powers.

(7) This section applies—

- (a) even if the water collected as a result of action that was authorised under an Act; or
- (b) whether the water collects permanently, temporarily or intermittently.

(8) In this section—

“**alter**” includes damage and interfere with.

“**chief executive**”, in relation to a railway, includes a railway manager or operator for whom an accreditation for the railway is in force under chapter 7.

“**transport route**” means a busway, railway or road.

488 Altering materials etc.

(1) A person must not, without lawful excuse, alter any naturally occurring materials, stockpile of material or works on a busway or railway.

Maximum penalty—200 penalty units.

(2) A person must not deposit rubbish or abandon goods or materials on a busway or railway other than at places approved by, and under conditions fixed by, the chief executive.

Maximum penalty—200 penalty units.

(3) In this section—

“**alter**” includes damage, interfere with and remove.

“chief executive”, in relation to a railway, includes a railway manager or operator for whom an accreditation for the railway is in force under chapter 7.

“works” means—

- (a) for a busway—
 - (i) ancillary works and encroachments; or
 - (ii) busway transport infrastructure works; or
- (b) for a railway—railway works.

489 Recovery of cost of damage

(1) This section applies if a person intentionally, recklessly or negligently damages works on a busway or railway.

(2) The person is liable to pay the chief executive the cost of repairing the damage.

(3) However, if the damage is caused by the driver of a vehicle whose identity is unknown, or who can not be located, the registered operator of the vehicle is liable for the costs of repairing the damage, unless the vehicle was being used without the registered operator’s knowledge or permission.

(4) Subsections (2) and (3) apply, whether or not the damage constitutes, or is done in connection with, an offence against this Act.

(5) However, if—

- (a) a court finds a person guilty of an offence against this Act; and
- (b) in committing the offence, the person damaged works;

the court may, as well as imposing a penalty, order the person to pay an amount towards the cost of repairing the damage.

(6) In this section—

“chief executive”, in relation to a railway, includes a railway manager or operator for whom an accreditation for the railway is in force under chapter 7.

“registered operator” means the person in whose name the vehicle is registered.

“repairing” includes replacing and reconstructing.

“works” means—

- (a) for a busway—
 - (i) ancillary works and encroachments; or
 - (ii) busway transport infrastructure works; or
- (b) for a railway—railway works.

490 Regulations

(1) The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may create offences and prescribe penalties for the offences of not more than 40 penalty units.

(3) In particular, regulations may be made for the matters specified in schedule 1.

(4) A regulation may confer functions or powers on a local government or a State government body.

CHAPTER 17—SAVINGS AND TRANSITIONAL PROVISIONS, AMENDMENTS AND REPEALS

PART 1—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT PORTS

492 Continuation of pt 5, div 2 of Port of Brisbane Authority Act

(1) The *Port of Brisbane Authority Act 1976*, part 5, division 2 as well as any definitions in the Act relevant to the division, continue to apply to leases for which compensation could be claimed under the division.

(2) This section has effect despite the repeal of the *Port of Brisbane Authority Act 1976*.

(3) This section expires on a date to be fixed by regulation.

493 Expiries under this part

If a provision of this part allows a regulation to prescribe an earlier day than the day stated in the provision for the expiry of a section, a regulation may be made prescribing an earlier day than the stated day for part of the section.

PART 2—GENERAL SAVINGS AND TRANSITIONAL PROVISIONS*Division 1—Transition of references about roads***494 Application of division**

This division applies to references in Acts in existence at its commencement.

495 Transport Infrastructure (Roads) Act 1991 references

A reference to the *Transport Infrastructure (Roads) Act 1991* is, in relation to transport infrastructure or another matter dealt with under this Act, taken to be a reference to this Act.

496 Main Roads Act 1920 references

A reference to the *Main Roads Act 1920* may, in relation to transport infrastructure or another matter dealt with under this Act, be taken to be a reference to this Act.

497 Commissioner of Main Roads references

A reference to the Commissioner of Main Roads (either as a natural person or corporation sole) is taken to be a reference to the chief executive.

498 Declared road references

(1) A reference to a declared road under the *Main Roads Act 1920* is taken to be a reference to a State-controlled road under this Act.

(2) A reference to a declared road under the *Transport Infrastructure (Roads) Act 1991* is taken to be a reference to a State-controlled road under this Act.

499 Motorway references

A reference to a motorway under the *Transport Infrastructure (Roads) Act 1991* is taken to be a reference to a motorway under this Act.

500 Main Roads Fund references

A reference to the Main Roads Fund is taken to be a reference to the funds of the department.

*Division 2—Transition of references about railways***501 Application of division**

This division applies to references in Acts (other than this Act) in existence at its commencement.

502 Railways Act 1914 references

A reference to the *Railways Act 1914* is taken to be a reference to this Act.

503 Transport Infrastructure (Railways) Act 1991 references

A reference to the *Transport Infrastructure (Railways) Act 1991* is taken to be a reference to this Act.

504 Commissioner for railways references

A reference to the commissioner for railways is taken to be a reference to—

- (a) for the commissioner as a corporation sole—Queensland Rail; or
- (b) for the commissioner as an individual—the chief executive of Queensland Rail.

505 Railways Department references

A reference to the Railways Department is taken to be a reference to Queensland Rail.

506 Queensland Railways references

A reference to Queensland Railways is taken to be a reference to Queensland Rail.

Division 3—Transition of references about ports**507 Application of division**

This division applies to references in Acts in existence at its commencement.

508 Harbours Act 1955 and Port of Brisbane Authority Act 1976 references

A reference to the *Harbours Act 1955* or *Port of Brisbane Authority Act 1976* is taken to be a reference to this Act.

509 Harbour board references

(1) A reference to a harbour board is taken to be a reference to a port authority under this Act.

(2) A reference to the Port of Brisbane Authority is taken to be a reference to the Port of Brisbane Corporation.

510 Harbour references

A reference to a harbour is taken to be a reference to a port under this Act.

511 Harbours Corporation and Harbours Trust references

(1) A reference to the Harbours Corporation or Harbours Trust is taken to be a reference to—

- (a) for a port to which subsection (2) applies—the Ports Corporation of Queensland; or
- (b) in any other case—the State.

(2) This subsection applies to the following ports—

- Abbot Point
- Burketown
- Cape Flattery
- Cooktown
- Hay Point
- Innisfail
- Karumba
- Lucinda
- Margaret Bay
- Maryborough
- Port Kennedy
- Quintell Beach
- St Lawrence
- Weipa.

512 Gold Coast Waterways Authority references

A reference to the Gold Coast Waterways Authority is taken to be a reference to the State.

CHAPTER 18—FURTHER TRANSITIONAL PROVISIONS

PART 1—TRANSITIONAL PROVISIONS FOR THE INTEGRATED PLANNING ACT 1997

513 Continuing application of previous provisions to non-IDAS applications

(1) This section applies if—

- (a) a local government would have had to apply under section 42 for the approval of a subdivision, rezoning or development of land (the “**work**”) under the section as in force immediately before its amendment by the *Integrated Planning and Other Legislation Amendment Act 1999*; and
- (b) a development approval for the same work is not required under the *Integrated Planning Act 1997*.

(2) Sections 42 and 44 and schedule 3, as in force immediately before their amendment by the *Integrated Planning and Other Legislation Amendment Act 1999*, apply to the work.

514 Applications for approval of subdivisions, rezoning or development

If an approval was applied for under section 42(1)(a)(i), as in force immediately before its amendment by the *Integrated Planning and Other Legislation Amendment Act 1999*, processing of the application and all matters incidental to the processing, including any review or appeal made in relation to a decision about the application, must proceed as if that Act had not been enacted.

PART 2—TRANSITIONAL PROVISIONS FOR THE TRANSPORT LEGISLATION AMENDMENT ACT 2000

515 Definitions for pt 2

In this part—

“amendment Act” means the *Transport Legislation Amendment Act 2000*.

“repealed section 51” means section 51 repealed by section 17 of the amendment Act.

“repealed section 52” means section 52 repealed by section 17 of the amendment Act.

516 Transitional—access-limited roads

(1) A State-controlled road or part of a State-controlled road that immediately before the commencement of this section was an access-limited road is taken to be a limited access road declared under section 54.

(2) For subsection (1), an access-limited road includes a State-controlled road, or part of a State-controlled road, to which access was limited immediately before the commencement of repealed section 51 to the extent not inconsistent with a declaration made under repealed section 51.⁶¹

(3) A policy made under repealed section 51 in force immediately before the commencement of this section is taken, with necessary changes, to be a policy gazetted under section 54(3).

517 Transitional—previous decisions about access

(1) A decision under repealed section 52⁶² in force immediately before the commencement of this section (a **“previous decision”**) is taken, from the commencement, with necessary changes, to be a decision under section 62(1).

(2) A decision prohibiting or limiting access to a State-controlled road in force immediately before the commencement of repealed section 52, to the

61 Repealed section 51 (Access-limited roads)

62 Repealed section 52 (Management of access between individual properties and State-controlled roads)

extent not inconsistent with a decision under the repealed section 52 in force immediately before the commencement of this section, (a “**previous decision**”) is taken from the commencement, with necessary changes, to be a decision under section 62(1).

(3) Without limiting subsection (1) or (2)—

- (a) a location at which access was permitted under the previous decision is taken to be a permitted road access location; and
- (b) means of access, under the previous decision, that are physical works are taken to be road access works.

518 Transitional—ancillary works and encroachments

(1) A reference in a gazette notice to an approval or contract under section 50,⁶³ published, given or made before the commencement of this section, is taken to be a reference to road access works.

(2) Anything that, immediately before the commencement of this section was a means of access constructed, maintained or operated under an approval, requirements or a contract under section 50, is taken from the commencement, for sections 72 to 74, to be road access works relating to a permitted road access location under a decision under section 62(1).

519 Transitional—wharf or other harbour work

(1) This section applies if management and control of a wharf or other harbour work was vested in a person under the repealed *Harbours Act 1955*, section 140⁶⁴ immediately before the commencement of this section.

(2) From the commencement, the person is taken to be appointed under section 459 as the manager of the public marine facility constituted by the harbour work (“**the facility**”).

(3) A provision of a by-law under the *Local Government Act 1936*, or local law, about the facility that was in force immediately before the commencement continues in force from the commencement until the manager makes a local law under section 462 that replaces, or is inconsistent with, the provision.

63 Section 50 (Ancillary works and encroachments)

64 Repealed *Harbours Act 1955*, section 140 (Management of government wharf may be vested in harbour board, etc.)

(4) A resolution of the board of a port authority about the facility that was in force immediately before the commencement continues in force from the commencement until the port authority takes action under section 463 that replaces, or is inconsistent with, the resolution.

(5) Despite subsections (3) and (4), an amount that immediately before the commencement was fixed under section 140(4A) of the repealed *Harbours Act 1955* in relation to the facility continues to be fixed from the commencement until a fee is imposed, under section 466 for the facility for any matter.

(6) A right, permit or license granted under any of the following by-laws, that was in force immediately before the commencement, is taken from the commencement to be an approval granted by the chief executive as manager of the facility—

- *Bowen Harbour Board By-law 1977, by-laws 1, 2, 9 and 10*
- *Mooloolaba Boat Harbour By-law 1976*
- *Rosslyn Bay Boat Harbour By-law 1980*
- *Snapper Creek and Urangan Boat Harbours By-law 1976.*

PART 3—TRANSITIONAL PROVISIONS FOR THE TRANSPORT INFRASTRUCTURE AND ANOTHER ACT AMENDMENT ACT 2003

520 Application of part

This part applies in addition to the *Acts Interpretation Act 1954*, part 6.⁶⁵

521 Definitions for pt 3

In this part—

“commencement” means commencement of this section.

“continuing accredited person” means a person who was an accredited person for chapter 7 immediately before the commencement.

⁶⁵ *Acts Interpretation Act 1954*, part 6 (Amendment and repeal of Acts)

“previous”, in relation to a numbered provision, means the provision of this Act as that provision existed immediately before the commencement.

522 Inclusion of s 120

The inclusion of section 120⁶⁶ does not affect or limit the interpretation of this Act in relation to a matter arising before the commencement.

523 Approved safety management system for person who is accredited at commencement

(1) This section applies to the safety management system that the chief executive considered appropriate at the time of considering the application for accreditation of a continuing accredited person, as that system was in force immediately before the commencement.

(2) The safety management system is the approved safety management system for a railway managed, or for the operation of rolling stock on a railway, by the continuing accredited person.

(3) For section 135,⁶⁷ the anniversary day for a continuing accredited person is the day the person was accredited under the Act as in force at any time before the commencement.

524 Certificate of accreditation given before commencement

(1) If a document about a continuing accredited person’s accreditation was issued to the person under this Act before the commencement and it purported to be a certificate of accreditation, the document is the person’s certificate of accreditation.

(2) If a document purporting to be a certificate of accreditation was not issued to a continuing accredited person before the commencement, the chief executive must issue a certificate of accreditation to the accredited person before the end of 6 months after the commencement.

66 Section 120 (Part does not create civil cause of action)

67 Section 135 (Accredited person to review approved safety management system each year and related matters)

525 Annual levy before commencement

(1) This section applies to a notice under previous section 127(3)⁶⁸ given to an accredited person before the commencement.

(2) After the commencement, the notice is a notice under section 127(3) and is not invalid only because it does not comply with that subsection.

526 Accreditation conditions

(1) This section applies to an accreditation under previous section 128⁶⁹ as the accreditation exists immediately before the commencement.

(2) The accreditation continues to be subject to the conditions to which the accreditation was subject immediately before the commencement.

(3) Subsection (2) is subject to an express provision of this Act or a regulation condition.

Example of the application of subsection (2)—

If an accreditation before the commencement contained conditions about the accredited person's financial capacity or public risk insurance arrangements, those conditions may not apply to the extent they are inconsistent with section 137.⁷⁰

527 How to deal with application for amending accreditation conditions made before commencement

(1) This section applies to an application made under previous section 132 for which the chief executive has not granted, or refused to grant, the amendment before the commencement.

(2) The application is to be dealt with by the chief executive as—

- (a) to the extent the application relates to the accredited person's safety management system—an application under section 133;⁷¹ and

68 The heading for section 127 (Annual levy) does not change.

69 The heading for section 128 (Accreditation conditions) does not change.

70 Section 137 (Financial capacity or insurance arrangements to meet potential accident liabilities)

71 Section 133 (Amendment of approved safety management system)

- (b) to the extent the application relates to matters other than the accredited person's safety management system—an application under section 132.⁷²

528 Actions to amend accreditation conditions without application or to suspend or cancel accreditation

(1) This section applies to an accreditation if—

- (a) the chief executive had given the accredited person a notice under previous section 139⁷³ or 140⁷⁴ before the commencement; and
- (b) the proceeding started by the giving of the notice has not been completed before the commencement.

(2) The proceeding that the notice starts is to be continued and completed under chapter 7, part 3, division 7⁷⁵ as if the notice were a show cause notice under that division.

(3) If the notice under previous section 140(2) was given at the same time as a notice under previous section 145,⁷⁶ the suspension under previous section 145 continues until the proceeding following the giving of the notice is completed under section 159 or 160.⁷⁷

529 Appeals

(1) This section applies to a person if, before the commencement, the person may—

- (a) ask the chief executive to review a decision under section 485(1);⁷⁸ or
- (b) appeal against a reviewed decision under section 485(4).

72 Section 132 (Amendment of imposed conditions)

73 Previous section 139 (Amending accreditation conditions without application)

74 Previous section 140 (Suspending or cancelling accreditation)

75 Chapter 7 (Rail transport infrastructure and other matters), part 3 (Accreditation), division 7 (Disciplinary action against accredited persons)

76 Previous section 145 (Immediate suspension of accreditation)

77 Section 159 (Action by chief executive) or 160 (Decision by chief executive not to take action under s 159)

78 Section 485 (Review of and appeals against decisions)

(2) The person's rights as mentioned in subsection (1) continue after the commencement subject to any limitations applicable before the commencement.

(3) Subsection (2) applies whether or not the person has done either of the things mentioned in subsection (1) before the commencement.

(4) For an application for a review or an appeal by a person to whom this section applies, when either the chief executive or an appeal court is exercising powers under the *Transport Planning and Coordination Act 1994*, part 5,⁷⁹ the chief executive or appeal court must exercise those powers as if the right to make the application or appeal arose after the commencement.

530 Declaration about s 521, definition "previous"

It is declared that, for the period starting on 1 December 2003 to immediately before the commencement of this section, the definition "previous" in section 521 is taken to have included 'as that provision existed' instead of 'with that number as in force'.

PART 4—TRANSITIONAL PROVISION FOR THE TRANSPORT INFRASTRUCTURE AMENDMENT ACT 2004

531 Statements about derailment

(1) This section applies to a statement about the derailment made by a relevant employee to a rail safety officer before the commencement of this section.

(2) The statement (the "**primary evidence**") and any information, or document or other thing obtained as a direct or indirect result of the statement (the "**derived evidence**") is not admissible in evidence against the employee in any civil or criminal proceeding.

⁷⁹ *Transport Planning and Coordination Act 1994*, part 5 (Review of and appeals against decisions)

(3) Subsection (2) does not prevent the primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

(4) Also, subsection (2) has no effect on the use or admissibility of a report in a coronial procedure.

(5) It is declared that the statement, information, or document or other thing mentioned in subsection (2) is taken to be restricted information for the purposes of chapter 7, part 6.

(6) In this section—

“derailment” means the derailment of the tilt train operated by Queensland Rail derailed on or about 16 November 2004 at Berajondo.

“relevant employee” means an individual involved in the derailment who at the time of the derailment was an employee of a railway operator for the rolling stock involved in the derailment.

SCHEDULE 1**SUBJECT MATTER FOR REGULATIONS**

section 490

1. The conditions of use of motorways or limited access roads, including limitations on access or use, and removal of stationary vehicles.
2. Regulation of traffic (including for safety purposes) during construction of road works or busway transport infrastructure works.
3. Regulation of animals on State-controlled roads or busways.
4. Camping on State-controlled roads or areas under the chief executive's control.
5. Regulation of ancillary works and encroachments.
6. Exemptions from regulations.
7. Allowing the chief executive to give a fee concession or a full or part refund of a fee or levy.
8. Fees, charges, allowances, royalties, costs or expenses to be paid.
9. The operation by the chief executive of electronic and other devices for monitoring, recording or controlling the passage of vehicles or the flow of traffic on—
 - (a) State-controlled roads; or
 - (b) roads that are proposed to be State-controlled roads; or
 - (c) franchised roads; or
 - (d) other roads with the agreement of the relevant local government; or
 - (e) busways.
10. Regulation of safety issues relating to managing a railway or operating rolling stock on a railway.
11. Conditions to which an accreditation is subject.
12. Regulation of—

SCHEDULE 1 (continued)

- (a) busway, light rail or miscellaneous transport infrastructure; or
 - (b) busway, light rail or miscellaneous transport infrastructure works.
- 13.** The rights and obligations of persons on a railway or busway.
- 14.** The removal and disposal of vehicles or property that are abandoned on a busway or railway.
- 15.** The removal of vehicles parked or property left—
- (a) on a busway against the chief executive's directions; or
 - (b) on a railway against the directions of an accredited person for the railway.
- 16.** The recovery of the costs of doing the things mentioned in sections 14 and 15.
- 17.** Alcohol breath tests, drug tests and medical examinations that may be required by a rail safety officer or an authorised person.
- 18.** The granting of approvals to licensees under chapter 12.
- 19.** Conditions of approvals to licensees under chapter 12.
- 20.** The management of public marine facilities by the chief executive, including matters about abandoned property, property moored, left, moved or parked contrary to a notice or direction, the appointment and powers of authorised officers and fees for producing or preparing documents.
- 21.** A levy on a person who has a tenure over boat harbour land managed by the chief executive as a contribution towards the dredging and maintenance of public marine transport infrastructure.
- 22.** How a levy is to be calculated, the date by which it must be paid, and for the payment of a levy by instalments.
- 23.** The suspension or cancellation of an accreditation for non-payment of a levy.
- 24.** Protection of, and consequences of damage to, State-owned or State-controlled transport infrastructure, including a State-controlled road, a future State-controlled road and ancillary works and encroachments on them.

SCHEDULE 2**SUBJECT MATTER FOR WATERWAY TRANSPORT
MANAGEMENT PLANS**

section 473

1. Regulating the mooring and anchoring of watercraft.
2. Regulating the types of water traffic that may use certain waters or certain marine infrastructure.
3. Regulating, when and for how long, watercraft may remain at a place or locality.
4. Regulating living on board watercraft.
5. Regulating recreational activities involving the use of waterways or watercraft, for example, private or commercial skiing, use of personal watercraft, diving, parasailing and sailing.
6. Nuisances caused by the use of watercraft or persons on board watercraft or by cargo or things associated with the use of watercraft or waterways infrastructure.
7. A levy on marina owners, as a contribution towards dredging and maintenance of public marine transport infrastructure.
8. The appointment of authorised persons and their powers.
9. The issue of directions by authorised persons under a waterway transport management plan.
10. Protection of public marine transport infrastructure and recovery of expenses incurred as a result of a contravention of a waterway transport management plan from a person contravening it.

SCHEDULE 3**REVIEWS AND APPEALS**

section 485

Section of the Act	Description of decision	Court
33	Refusal to approve carrying out of proposed road works	Magistrates
	Refusal to approve action interfering with State-controlled road or its operation	Magistrates
	Imposition of conditions on approval	Magistrates
34	Decision of chief executive about amount of costs incurred	District or Magistrates
37	Decision of chief executive about amount of compensation	District or Magistrates
37	Decision not to extend time	District or Magistrates
38	Decision of chief executive not to contribute to fencing	Magistrates
42(1)	Refusal to approve road works or changes	Planning and Environment
42(4) and (6)	Imposition of conditions	Planning and Environment
42(8)	Decision of chief executive about amount of compensation	District or Magistrates
43(1)	Refusal to approve erection of, alteration or operation of sign or device	Planning and Environment
43(3) and (5)	Imposition or inclusion of conditions	Planning and Environment
48	Decision of chief executive about cost of repair, replacement or reconstruction of damaged work	District or Magistrates

SCHEDULE 3 (continued)

50	Refusal of chief executive to approve construction, maintenance, operation or conduct of ancillary work or encroachment	Magistrates
52(1)	Decision to cause ancillary works and encroachments to be altered, relocated, made safe or removed, or to direct that the conduct of ancillary works and encroachments be altered or stop	District or Magistrates
52(2)	Decision of chief executive about cost of alteration, making safe or removing ancillary work and encroachments	District or Magistrates
52(4)	Decision to alter, relocate, make safe or remove ancillary works and encroachments or that activities are to be altered or to stop	Magistrates
54(1)	Decision to declare a limited access road	Planning and Environment
54	Policy for limited access road made, replaced or amended	Planning and Environment
62	Decision about access between State-controlled road and particular adjacent land	Planning and Environment
73	Decision of chief executive about amount of compensation	District or Magistrates
74(2)	Decision not to extend time for claim	District or Magistrates
78	Requirement by chief executive about public utility plant on State-controlled road	District
82	Decision of chief executive about amount of additional expense	District or Magistrates
126	Refusal to grant accreditation	District
126	Granting accreditation subject to conditions	District
132(2)	Refusal to amend accreditation conditions	District or Magistrates

SCHEDULE 3 (continued)

133(2)	Refusal to approve a proposed amendment to approved safety management system	District or Magistrates
136(2)	Refusal to approve a proposed safety management system	District or Magistrates
139(2)	Decision about a matter relating to rail safety that can not be agreed on by parties	District or Magistrates
144(1)	Decision to give a safety direction	District or Magistrates
146(1)	A written direction to do or not to do an act	District or Magistrates
147(1)	Telling a person to do or not to do an act	District or Magistrates
158(2)	Immediate suspension of accreditation	District or Magistrates
159(2)	Direction to apply for amendment of an approved safety management system, or suspension, variation or cancellation of accreditation	District or Magistrates
166(2)	Refusal to allow later time to give notice for compensation	Magistrates
167	Refusal to approve diversion or construction of watercourse	Magistrates
168(2)	Direction requiring works to stop, be altered or not started	District or Magistrates
168(4)	Requirement to alter, demolish or take away works	District or Magistrates
168(6)	Decision to alter, demolish or take away works	District or Magistrates
168(6)	Decision about cost of altering, demolishing or taking away works	District or Magistrates
300(3)(b)	Refusal to allow later time to give notice for compensation	Magistrates
309(1)	Refusal to approve erection of, alteration or operation of sign or device	Planning and Environment
309(3) and (5)	Imposition or inclusion of conditions	Planning and Environment

SCHEDULE 3 (continued)

313	Refusal of chief executive to approve construction, maintenance, operation or conduct of ancillary work or encroachment	Magistrates
315(1)	Decision to cause ancillary works and encroachments to be altered, relocated, made safe or removed, or to direct that the conduct of ancillary works and encroachments be altered or stopped	District or Magistrates
315(2)	Decision of chief executive about cost of alteration, making safe or removing ancillary work and encroachments	District or Magistrates
315(4)	Decision to alter, relocate, make safe or remove ancillary works and encroachments or that activities are to be altered or to stop	Magistrates
322	Requirement by chief executive about public utility plant on busway land	District
327	Decision of chief executive about amount of additional expense	District or Magistrates
351(3)(b)	Refusal to allow later time to give notice for compensation	Magistrates
370	Requirement by chief executive about public utility plant on light rail land	District
375	Decision of chief executive about amount of additional expense	District or Magistrates
388	Giving accreditation on conditions	District
388	Refusal to give accreditation	District
393(2)	Refusal to amend accreditation conditions	District or Magistrates
394(3)	Amendment of accreditation conditions	District or Magistrates
394(8)	Amendment of accreditation conditions	District or Magistrates
395(3)	Suspension or cancellation of accreditation	District or Magistrates

SCHEDULE 3 (continued)

395(6)	Immediate cancellation of accreditation	District or Magistrates
396(2)	Immediate suspension of accreditation	District or Magistrates
443	Refusing to give exemption	Magistrates
447	Amendment, suspension or cancellation of approval or exemption	Magistrates
449	Immediate suspension of approval or exemption	Magistrates
489	Decision of chief executive about cost of repair, replacement or reconstruction of damaged works	District or Magistrates

If this schedule indicates that an appeal may be made to a District Court or to a Magistrates Court, the appeal is to be made to a District Court if the amount involved exceeds \$40 000 and to a Magistrates Court in any other case.

SCHEDULE 4**RAILWAY TUNNEL EASEMENTS**

section 241

Servient land

Lot 325 CP SL 1633
 Lot 408 CP SL 7151
 Lot 515 CP SL 6565
 Lot 461 CP SL 3741
 Lot 13 CP B32219
 Lot 1 RP 115152
 Lot 5 SP 115364
 Lot 5 SP 115364
 Lot 5 SP 115364
 Lot 5 SP 115364
 Lot 5 SP 115364
 Lot 5 SP 115364
 Lot 5 SP 115364
 Lot 5 SP 115364
 Lot 5 SP 115364
 Lot 2 RP 124155
 Lot 2 RP 124155
 Lot 2 RP 118622
 Lot 2 RP 118622
 Lot 1 RP 152576
 Lot 1 RP 152576
 Lot 2 RP 152576
 Lot 2 RP 85223 and Lot 1 RP 105765
 Lot 21 RP 178644
 Lot 21 RP 178644
 Lot 1 RP 188351
 Lot 1 RP 117227

Easement

Easements A and B RP 852852
 Lots C and D CP 852851
 Easement G RP 852850
 Lot H CP 852849
 Easement K RP 136379
 Easement H RP 115158
 Easement A SP 118572
 Easement B SP 118573
 Easement E SP 118574
 Easement F SP 118575
 Easement G SP 118576
 Easement H SP 118577
 Easement K SP 134045
 Easement L SP 123675
 Easement A RP 852844
 Easement B RP 893936
 Easement in gross no. 602205520
 Easement B RP 852845
 Easement in gross no. 602205520
 Easement C RP 852845
 Easement D RP 852845
 Easement B RP 852848
 Easement in gross no. 602106739
 Easements A, B and C RP 183623
 Easement in gross no. 602505742
 Easement A RP 880802

SCHEDULE 4 (continued)

Servient land	Easement
Lot 2 RP 117227	Easement A RP 852848
Lot 1 RP 155774	Easement E RP 852846
Lot 1 RP 197728	Easement F RP 852847
Lot 2 RP 10133	Easement in gross no. 601608083
Lot 2 RP 10133	Easement H RP 852847
Lot 3 RP 10133	Easement in gross no. 601401832
Lot 3 RP 10133	Easement K RP 852847
Lot 13 RP 10122	Easement D RP 852846
Lot 2 RP 60443	Easement C RP 852846
Lot 2 RP 197728	Easement G RP 852847
Lot 13 RP 10124	Easement in gross no. 601539792
Lot 13 RP 10124 and Lot 2 RP 10129	Easement J RP 852847
Lot 12 RP 10124	Easement in gross no. 601544351
Lot 1 RP 196222	Easement in gross no. 602129535
Lot 1 RP 196222	Easement in gross no. 602129536
Lot 9 RP 814964	Easement A RP 852846
Lot 0 BUP 4313 (CMS 10872)	Easement in gross no. 601201902
Lot 0 BUP 4313 (CMS 10872)	Easement B RP 852846
Lots 22 and 23 RP 10122	Easement in gross no. 602279385
Lot 2 RP 888141	Easement in gross no. 601837139
Lot 5 RP 127273	Easement A RP 852853
Lot 0 BUP 9977 (CMS 5362)	Easement B RP 852853
Lot 15 SP 126957	Easements C and D RP 852853
Lot 16 SP 120013	Easements C and E RP 852853
Lot 2 RP 9449	Easement F RP 852854
Lot 1 RP 9449	Easement G RP 852854
Lot 10 SP 120689	Lot B RP 852855
Lot 10 SP 120689	Easement H RP 852853
Lot 10 SP 120689	Lot J RP 852854
Lot 10 SP 120689	Easements M and N RP 885880
Lot 10 SP 120689	Easement in gross no. 601481648
Lot 10 SP 120689	Easement in gross no. 601922003

SCHEDULE 4 (continued)

Servient land	Easement
Lot 10 SP 120689	Easement in gross no. 601922004
Lot 10 SP 120689	Easement in gross no. 601993708
Lot 10 SP 120689	Easement in gross no. 602418143
Lot 8 RP 151540	Easement A RP 852855
Lot 1 RP 202674	Easement in gross no. 601481648
Lot 1 RP 202674	Easement E RP 852855
Lot 0 BUP 105422 (CMS 15376)	Easements C and D RP 852855
Lot 3 RP 9399	Easement A RP 880804
Lot 103 RP 48101	Easement F RP 852855
Lots 67 to 69 RP 46061	Easement in gross no. 602009566
Lots 67 to 69 RP 46061	Easement in gross no. 602009567
Lot 60 RP 46062	Easement A RP 852856
Lot 59 RP 46062	Easement in gross no. 601842947
Lot 59 RP 46062	Easement B RP 852856
Lot 58 RP 46062	Easement C RP 852856
Lots 55 to 57 RP 46062	Easements A, B, and C RP 880805
Lot 54 RP 47036	Easement D RP 852856
Lots 51 and 52 RP 47036	Easement E RP 852856
Lot 1 RP 126496	Easements A and B RP 126496
Lot 2 RP 11632	Easement in gross no. 602230916
Lot 4 RP 11657	Easement in gross no. 602063425
Lot 5 RP 11657	Easement A RP 46641
Lot 6 RP 11657	Easement in gross no. 602443214
Lot 6 RP 11657	Easement in gross no. 602443215
Lot 7 RP 11657	Easement in gross no. 601262452
Lot 7 RP 11657	Easement in gross no. 702217998
Lot 12 RP 11657	Easement in gross no. 602820194
Lots 21 to 26 RP 11653	Easement in gross no. 602464557
Lots 21, 22, 24 and 26 RP 11653	Easement in gross no. 602464558
Lots 27 and 28 RP 11653	Easement in gross no. 602784029
Lot 28 RP 11653	Easement in gross no. 602563205

SCHEDULE 4 (continued)

Servient land

Lot 29 RP 11668

Lot 29 RP 11668

Easement

Easement in gross no. 602784029

Easement in gross no. 602784030

SCHEDULE 6**DICTIONARY**

section 3

“accepted representations”, for chapter 7, part 3, see section 121.

“access” for—

- (a) chapter 9, part 4, division 6—see section 330; or
- (b) chapter 10, part 4, division 5—see section 378.

“accreditation” means—

- (a) for a railway—accreditation granted under section 126 as a railway manager or railway operator; or
- (b) for light rail—accreditation given under section 388 as a light rail manager or light rail operator.

“accredited person” means—

- (a) for chapter 7—a railway manager or operator for whom an accreditation is in force under the chapter; or
- (b) for chapter 10—a light rail manager or operator for a light rail for whom an accreditation is in force under the chapter.

“acquire”, for chapter 9, part 3 and chapter 10, part 3, includes acquire by gift, exchange or purchase.

“administration charge”, for chapter 6, part 7, see section 92.

“affected person”, for chapter 11, see section 402.

“air transport infrastructure” includes transport infrastructure relating to aircraft or to the operation of aircraft.

“alter” includes add to.

“amusement railway” means a railway that—

- (a) is operated solely within an amusement or theme park—
 - (i) that is registered as an amusement device under the *Workplace Health and Safety Act 1995*; and

SCHEDULE 6 (continued)

- (ii) that does not operate on, or across, a road; or
- (b) operates on a track with a gauge of less than 600 mm on a place other than a road.

“ancillary works and encroachments”, for chapters 6 and 9, means—

- (a) the following things—
 - (i) cane railways;
 - (ii) monorails;
 - (iii) bridges, overhead conveyors or other overhead structures;
 - (iv) tunnels;
 - (v) rest area facilities;
 - (vi) monuments or statues;
 - (vii) advertising signs or other advertising devices;
 - (viii) traffic and service signs;
 - (ix) bores, wells, pumps, windmills, water pipes, channels, culverts, viaducts, water tanks or dams;
 - (x) pipes;
 - (xi) tanks;
 - (xii) cables;
 - (xiii) road access works;
 - (xiv) paths or bikeways;
 - (xv) grids or other stock facilities;
 - (xvi) buildings, shelters, awnings or mail boxes;
 - (xvii) poles, lighting, gates or fences;
 - (xviii) pumps and bowsers; or
- (b) any of the following activities—
 - (i) drilling;
 - (ii) clearing;
 - (iii) trimming;

SCHEDULE 6 (continued)

- (iv) slashing;
 - (v) landscaping;
 - (vi) planting;
 - (vii) burning off;
 - (viii) removing trees;
 - (ix) road safety related activities;
 - (x) sporting activities;
 - (xi) camping;
 - (xii) conducting a business (for example, a market);
 - (xiii) moving stock, other than under a stock route travel permit under the *Land Protection (Pest and Stock Route Management) Act 2002*;
 - (xiv) holding meetings; or
- (c) other encroachments declared under a regulation to be ancillary works and encroachments;

but does not include public utility plant.

“approval”—

- (a) for chapter 12—see section 415; or
- (b) for chapter 14—means an approval by the chief executive.

“approval conditions”, for chapter 12, see section 415.

“approved form” means a form approved by the chief executive under section 479.

“approved safety management system”, for chapter 7, part 3, see section 122.

“associated person” for—

- (a) chapter 7, part 2—see section 109; or
- (b) chapter 11—see section 402.

“audit program”, for chapter 7, part 3, see section 121.

SCHEDULE 6 (continued)

“authorised officer”, for a person who is appointed under a regulation as an officer relating to a matter as stated in the regulation, means a person appointed under the regulation as an officer for the matter.

“authorised person” means—

- (a) for a person who is appointed under a regulation as an authorised person relating to a matter as stated in the regulation—a person appointed under the regulation as an authorised person for the matter; or
- (b) otherwise—a person who is an authorised person under the *Transport Operations (Passenger Transport) Act 1994*, section 111.⁸⁰

“authority”, for chapter 7, part 2, see section 109.

“busway” means—

- (a) a route especially designed and constructed for, and dedicated to, the priority movement of buses for passenger transport purposes; and
- (b) places for the taking on and letting off of bus passengers using the route.

“busway land”—

1. “Busway land” means land declared to be busway land under chapter 9.
2. Additionally, the following apply—
 - (a) for chapter 9, part 4, division 4, see section 316;
 - (b) for chapter 9, part 4, division 6, see section 330;
 - (c) for chapter 10, part 4, division 3, see section 364;
 - (d) for chapter 10, part 4, division 5, see section 378.

“busway transport infrastructure” means each of the following—

- (a) the pavement on which buses run for a busway;
- (b) the stations for operating a busway;

⁸⁰ *Transport Operations (Passenger Transport) Act 1994*, section 111 (Appointment of authorised persons etc.)

SCHEDULE 6 (continued)

- (c) other facilities necessary for managing or operating a busway, including for example—
- (i) infrastructure put in place for the busway, including the following—
- support earthworks
 - cuttings
 - drainage works
 - excavations
 - land fill; and
- (ii) the following things, if associated with the busway's operation—
- access or service lanes
 - bridges, including bridges over water
 - busway operation control facilities
 - communication systems
 - depots
 - machinery and other equipment
 - noise barriers
 - notice boards, notice markers and signs
 - office buildings
 - passenger interchange facilities between the busway and other modes of transport
 - platforms
 - power and communication cables
 - signalling facilities and equipment
 - survey stations, pegs and marks
 - ticketing equipment
 - tunnels
 - under-busway structures

SCHEDULE 6 (continued)

- workshops;
- (d) vehicle parking and set down facilities for intending passengers for a busway;
- (e) pedestrian facilities, including paving of footpaths, for a busway;
- (f) landscaping or associated works for a busway.

“busway transport infrastructure works” means works done for—

- (a) constructing busway transport infrastructure or things associated with busway transport infrastructure; or
- (b) the maintenance of busway transport infrastructure or of things associated with busway transport infrastructure; or
- (c) facilitating the operation of busway transport infrastructure or things associated with busway transport infrastructure.

“candidate GOC” has the same meaning as in the *Government Owned Corporations Act 1993*.

“cane railway” means a tramway or railway—

- (a) operated, entirely or partly, on—
 - (iii) an access right under the *Sugar Industry Act 1999*, chapter 2, part 4; and
- (b) used, or proposed to be used, to transport sugar cane, sugar or sugar cane by-products; and
- (c) that does not transport passengers or other freight for reward.

“carry out” road or railway works means do anything on land that is reasonably necessary or desirable for the works, including, for example, temporarily occupy or use the land.

“certificate of accreditation”, for chapter 7, part 3 and section 524, see section 121.

“charge” see section 267.

“civil or criminal proceeding”, for chapter 7, part 6, and section 531, see section 213B.

“class exemption” means an exemption granted to a class of person under section 443(2).

SCHEDULE 6 (continued)

“**class representative**”, for a class exemption, means the representative of a class of person who applied for the exemption.

“**commencement**”, for chapter 18, part 3, see section 521.

“**commercial corridor land**” means old QR land—

- (a) on or within which rail transport infrastructure is situated; and
- (b) notified by the chief executive in the gazette.

“**compensation notice**”, for chapter 11, see section 411.

“**construction**” of busway, light rail, or road transport infrastructure includes each of the following for the infrastructure, to the extent it involves the development of the infrastructure—

- (a) initial construction;
- (b) improvement of its standard;
- (c) realignment;
- (d) widening;
- (e) extension to accommodate the extension of a busway, light rail or road.

“**continuing accredited person**”, for chapter 18, part 3, see section 521.

“**convicting**” a person includes a court finding the person guilty, or the person pleading guilty, whether or not a conviction is recorded.

“**coordination plan**” means the transport coordination plan developed under the *Transport Planning and Coordination Act 1994*.

“**coronial procedure**”, for chapter 7, part 6, and section 531, see section 213B.

“**corporate plan**”, for chapter 8, see section 267.

“**dangerous goods**” means goods prescribed under a regulation to be dangerous goods.

“**dangerous situation**” means a situation involving the transportation of dangerous goods by rail that is causing, or is likely to cause, imminent risk of—

- (a) death of, or significant injury to, a person; or
- (b) significant harm to the environment; or

SCHEDULE 6 (continued)

(c) significant damage to property.

“designated vehicle”, for chapter 6, part 7, see section 92.

“development”, for chapter 11, see section 402.

“disciplinary action”, for chapter 7, part 3, see section 121.

“dispute matter”, for chapter 7, part 3, see section 121.

“dispute notice”, for chapter 12, see section 415.

“employee”, for section 26 and chapter 7, parts 3, 6 and 8, see section 121.

“enter”, relating to rolling stock, for chapter 7, part 5, see section 170.

“establishment” for—

(a) chapter 9, part 4, division 6—see section 330; or

(b) chapter 10, part 4, division 5—see section 378.

“E toll only pay point”, for chapter 6, part 7, see section 92.

“E toll system”, for chapter 6, part 7, see section 92.

“exemption”, for chapter 14, means an exemption under section 443.

“exempt vehicle”, for chapter 6, part 7, see section 92.

“existing rail corridor land” means old QR land—

(a) on or within which rail transport infrastructure is situated; and

(b) that is not commercial corridor land.

“franchised road” means a road to which a road franchise agreement⁸¹ applies, and includes facilities identified in the road franchise agreement that are on or adjacent to the road and relate to the operation or servicing of the road or facilities for road users.

“franchisee” means a person with whom the Minister has entered into a road franchise agreement.

“future railway land” has the meaning given by section 242.

“GOC” includes a candidate GOC.

⁸¹ Road franchise agreements are entered into under section 85 (Power to enter into road franchise agreements).

SCHEDULE 6 (continued)

“government supported transport infrastructure” means transport infrastructure that—

- (a) is funded, wholly or partly, by appropriations from the consolidated fund; or
- (b) is funded, wholly or partly, by borrowings made by the Government (other than commercial borrowings made by the Queensland Treasury Corporation acting as an agent); or
- (c) is funded, wholly or partly, by borrowings guaranteed by the Government other than borrowings for commercial investments; or
- (d) is provided by a person on the basis of conditions agreed to by the Government that are intended to support the commercial viability of the infrastructure.

“imposed condition”, for chapter 7, part 3, see section 121.

“in” a rail vehicle includes on the vehicle.

“incident” means an incident that has caused or could have caused—

- (a) property damage; or
- (b) injury to an individual, including death.

“individual”, for chapter 7, part 6, and section 531, see section 213B.

“information notice”, for a decision the subject of a written notice given to a person, is a written notice stating that the person may—

- (a) under section 485, ask for the decision to be reviewed and appeal against the reviewed decision; and
- (b) under the *Transport Planning and Coordination Act 1994*, part 5, ask for the decision or the reviewed decision to be stayed.

“inquiry”, for chapter 7, part 6, see section 213B.

“interference” for—

- (a) chapter 9, part 4, division 6—see section 330; or
- (b) chapter 10, part 4, division 5—see section 378.

“interfere with” a railway means—

- (a) carry out works on the railway; or

SCHEDULE 6 (continued)

(b) otherwise interfere with the railway or its operation.

“interim minor amendment”, for chapter 7, part 3, see section 121.

“intersecting area”, for chapter 12, see section 415.

“investigation”, for chapter 7, part 6, see section 213B.

“investigator” means—

- (a) other than for chapter 11—a person who holds an authority; or
- (b) for chapter 11—a person who holds an investigator’s authority under that chapter.

“investigator’s authority”, for chapter 11, see section 402.

“land”—

- (a) for chapters 6 and 9 to 12—includes—
 - (i) an interest in land; and
 - (ii) land within the beds and banks of a watercourse or inundated land; and
 - (iii) land beneath the internal waters of Queensland; or
- (b) for chapter 7 includes—
 - (i) a reserve within the meaning of the *Land Act 1994* or a road; and
 - (ii) land within the beds or banks of a watercourse or inundated land; or
- (c) for chapter 7, part 7 and for chapters 9 to 12—includes the airspace above, and the land below, the surface; or
- (d) for chapter 8—see section 267.

“licensee”, for chapter 12, see section 415.

“light rail” means—

- (a) a route especially designed and constructed for, and wholly or partly dedicated to, the priority movement of light rail vehicles for passenger transport purposes, and
- (b) places for the taking on and letting off of light rail vehicle passengers using the route.

SCHEDULE 6 (continued)

“light rail authority”, for chapter 10, part 4, division 3, see section 364.

“light rail land”—

1. “Light rail land” means land declared to be light rail land under chapter 10.
2. Additionally, the following apply—
 - (a) for chapter 10, part 4, division 3, see section 364;
 - (b) for chapter 10, part 4, division 5, see section 378.

“light rail manager”, for a light rail, means a person who holds an accreditation under chapter 10, part 5 as the light rail manager for the light rail.

“light rail operator”, for a light rail, means a person who holds an accreditation under chapter 10, part 5 as a light rail operator for the light rail.

“light rail transport infrastructure” means each of the following—

- (a) the rails on which light rail vehicles run for a light rail and pavement incorporating the rails;
- (b) the stations for operating a light rail;
- (c) other facilities necessary for managing or operating a light rail, including, for example—
 - (i) works built for the light rail, including the following—
 - cuttings
 - drainage works
 - excavations
 - land fill
 - track support earthworks; and
 - (ii) light rail vehicles that operate on a light rail; and
 - (iii) the following things if they are associated with the light rail’s operation—
 - access or service lanes
 - bridges, including bridges over water

SCHEDULE 6 (continued)

- communication systems
 - light rail operation control facilities
 - machinery and other equipment
 - maintenance depots
 - marshalling yards
 - noise barriers
 - notice boards, notice markers and signs
 - office buildings
 - overhead electrical power supply systems and support structures
 - over-track structures
 - passenger interchange facilities between light rail and other modes of transport
 - platforms
 - power and communication cables
 - power supply substations and equipment
 - signalling facilities and equipment
 - survey stations, pegs and marks
 - tunnels
 - ticketing equipment
 - under-track structures
 - workshops;
- (d) vehicle parking and set down facilities for intending passengers for a light rail;
- (e) pedestrian facilities, including paving of footpaths, for a light rail;
- (f) landscaping or associated works for a light rail.

“light rail transport infrastructure works” means works done for—

SCHEDULE 6 (continued)

- (a) constructing light rail transport infrastructure or things associated with light rail transport infrastructure; or
- (b) the maintenance of light rail transport infrastructure or of things associated with light rail transport infrastructure; or
- (c) facilitating the operation of light rail transport infrastructure or things associated with light rail transport infrastructure.

“light rail vehicle” means a type of transport that—

- (a) is intended wholly or mainly for the carriage of passengers or for track maintenance; and
- (b) travels on flanged wheels on parallel rails; and
- (c) is designed to operate in line of sight on road-like areas.

“local government road” means a road that is under the control of a local government.

“maintain” includes repair.

“maintenance”, for chapters 6, 7 and 12, includes—

- (a) rehabilitation; and
- (b) replacement; and
- (c) repair; and
- (d) recurrent servicing; and
- (e) preventive and remedial action; and
- (f) removal; and
- (g) alteration; and
- (h) maintaining systems and services for transport infrastructure.

“miscellaneous transport infrastructure” see section 416.

“miscellaneous transport infrastructure works” means—

- (a) works done for—
 - (i) constructing miscellaneous transport infrastructure or things associated with miscellaneous transport infrastructure; or

SCHEDULE 6 (continued)

- (ii) the maintenance of miscellaneous transport infrastructure or of things associated with miscellaneous transport infrastructure; or
 - (iii) facilitating the operation of miscellaneous transport infrastructure or things associated with miscellaneous transport infrastructure; or
- (b) works declared under a regulation to be miscellaneous transport infrastructure works.

“motorway” means a State-controlled road that is declared to be a motorway under section 27 (Declaration of motorways).

“new rail corridor land” means land that is leased to a railway manager under section 240.

“non-rail corridor land” means old QR land declared to be non-rail corridor land.

“notice” means a notice, sign or pictograph of any type of material and whether fixed or moveable.

“occupier”, of land, for chapters 6, 7, 9, 10, 11 and 12, means—

- (a) the person in actual occupation of the land; or
- (b) if there is no person in actual occupation—the person entitled to possession of the land;

and, for a watercourse or reserve, includes the person responsible for the care and management of the watercourse or reserve.

“old QR land” means land (other than an easement in land) that, immediately before the commencement of the *Transport Infrastructure Amendment (Rail) Act 1995*, section 4—

- (a) was held by the previous rail corporation in fee simple; or
- (b) could be granted in fee simple to the previous rail corporation under the *Transport Infrastructure (Railways) Act 1991*, section 49(2).

“on” a railway, road or other land includes over or under the land.

“operational licence”, for chapter 12, see section 415.

“other rail infrastructure” means—

SCHEDULE 6 (continued)

- (a) freight centres or depots; or
- (b) maintenance depots; or
- (c) office buildings or housing; or
- (d) rolling stock or other vehicles that operate on a railway; or
- (e) workshops; or
- (f) any railway track, works or other thing that is part of anything mentioned in paragraphs (a) to (e).

“owner”, of land, includes—

- (a) the lessee or licensee from the State of the land; or
- (b) the person who has lawful control of the land, on trust or otherwise; or
- (c) the person who is entitled to receive the rents and profits of the land.

“personal watercraft” means a power driven ship that is designed to be operated by a person standing, crouching or kneeling on it or sitting astride it.

“place”, for chapter 7, part 5, see section 170.

“plant” includes any of the following—

- (a) a conduit or cable;
- (b) an electrical installation under the *Electricity Act 1994*;
- (c) an overhead conveyor;
- (d) a pipeline;
- (e) a pole;
- (f) a railway, monorail or tramway;
- (g) a telecommunications plant;
- (h) a viaduct or aqueduct;
- (i) a water channel.

“port”, of a port authority, means a port for which the authority is responsible, and includes an airport for which the authority is responsible.

SCHEDULE 6 (continued)

“port authority” means—

- (a) the Ports Corporation of Queensland; or
- (b) the Port of Brisbane Corporation; or
- (c) the Gladstone Port Authority;⁸² or
- (e) a port authority established under section 268 (Establishment of new port authority); or
- (f) another body established under the *Government Owned Corporations Act 1993* and declared by regulation to be a port authority;

but does not include a port authority that has been abolished under section 270 (Abolition of port authority).

“port infrastructure” includes transport infrastructure relating to ports.

“prescribed time”, for chapter 6, part 7, see section 92.

“previous”, for chapter 18, part 3, see section 521.

“previous rail corporation” means Queensland Railways.

“proposed action”, for chapter 7, part 3, see section 121.

“public marine facility” means public marine transport infrastructure, including—

- (a) land or waters associated with the infrastructure that are affected by its use; and
- (b) land or waters specified for the infrastructure under a regulation made with the objective of clarifying what are the land or waters associated with the infrastructure that are affected by its use.

Examples—

1. An area of land and waters, specified under a regulation, that constitutes a boat harbour.
2. Breakwaters, jetties, landings, mooring piles, pontoons, carparks and land or waters affected by the use of the infrastructure.

82 Under the *Government Owned Corporations (Central Queensland Ports Authority) Regulation 2004*, section 12, the name of the Gladstone Port Authority has been changed to the Central Queensland Ports Authority.

SCHEDULE 6 (continued)

“public marine transport infrastructure” means State-owned or State-controlled transport infrastructure relating to Queensland waters, other than port or miscellaneous transport infrastructure.

“public place”, for chapter 7, part 5, see section 170.

“public utility plant” means plant permitted under another Act or a Commonwealth Act to be on a road.

“public utility provider” means an entity that owns public utility plant.

“Queensland Competition Authority” means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997*, section 5.

“rail”, for chapter 14, includes cableway.

“rail corridor land” means existing rail corridor land or new rail corridor land.

“rail safety officer” means a person who is appointed as a rail safety officer under section 171.

“rail transport infrastructure” means facilities necessary for operating a railway, including—

- (a) railway track and works built for the railway, including, for example—
 - cuttings
 - drainage works
 - excavations
 - land fill
 - track support earthworks; and
- (b) any of the following things that are associated with the railway’s operation—
 - bridges
 - communication systems
 - machinery and other equipment
 - marshalling yards
 - notice boards, notice markers and signs

SCHEDULE 6 (continued)

- overhead electrical power supply systems
- over-track structures
- platforms
- power and communication cables
- service roads
- signalling facilities and equipment
- stations
- survey stations, pegs and marks
- train operation control facilities
- tunnels
- under-track structures;

but does not include other rail infrastructure.

“rail vehicle”, for chapter 14, includes a cableway car.

“railway” does not include a light rail or light rail transport infrastructure, and for chapter 7, part 3, see also section 121.

“railway crossing” means a level crossing, bridge or another structure used to cross over or under a railway.

“railway manager”, for a railway or a proposed railway, means the person who is accredited under chapter 7, part 3 as the railway manager for the railway or proposed railway.

“railway offence” means—

- (a) an offence against a provision of chapter 7, parts 3, 5 or 6; or
- (b) an attempt to commit an offence against a provision mentioned in paragraph (a).

“railway operator” means a person who operates rolling stock on a railway.

“railway provision” means a provision of chapter 7, parts 3, 5 or 6.

“railway workplace”, for chapter 7, part 5, see section 170.

“railway works” means—

SCHEDULE 6 (continued)

- (a) works for constructing, maintaining, altering or operating a railway or rolling stock, or
- (b) other works declared under a regulation to be railway works.

“reasonably” means on grounds that are reasonable in all the circumstances.

“rectification notice”, for chapter 11, see section 411.

“registered operator”, for chapter 6, part 7, see section 92.

“registration Act”, for chapter 6, part 7, see section 92.

“regulation condition”, for chapter 7, part 3, see section 121.

“relevant person”, for chapter 7, part 6, see section 239AE.

“representation period”, for chapter 7, part 3, see section 121.

“required land”, for chapter 12, see section 415.

“responsible entity”, for chapter 12, see section 415.

“restricted information”, for chapter 7, part 6, see section 213B.

“reviewed decision” see section 485.

“road”—

- (a) for chapter 9, part 3, has the meaning given in section 301; and
- (b) for chapter 10, part 3, has the meaning given in section 352; and
- (c) does not include an area or thing that is busway land, busway transport infrastructure, light rail land or light rail transport infrastructure; and
- (d) subject to paragraphs (a) to (c), means—
 - (i) an area of land dedicated to public use as a road; or
 - (ii) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
 - (iii) a bridge, culvert, ferry, ford, tunnel or viaduct; or
 - (iv) a pedestrian or bicycle path; or
 - (v) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in subparagraphs (i) to (iv).

SCHEDULE 6 (continued)

“road access works”, for chapters 6 and 9, means—

- (a) a physical means of entry or exit for traffic between land and a road; or

Example—

A driveway.

- (b) road works providing entry or exit for traffic between works mentioned in paragraph (a) and the part of the road formed or prepared for use by general traffic.

Example—

An acceleration or deceleration lane, or a laneway, lane or track, connecting a driveway of a property adjacent to a road to a lane on the road designed to carry through traffic.

“road franchise agreement”, for chapter 6, see section 85.

“road transport infrastructure” includes transport infrastructure relating to roads.

“road works”, for chapter 6, means—

- (a) works done for—
- (i) constructing roads or things associated with roads; or
 - (ii) maintaining roads or things associated with roads (other than public utility plant); or
 - (iii) facilitating the operation of road transport infrastructure; or
- (b) works declared under a regulation to be road works.

“rolling stock” means a vehicle, including, for example, a train and light rail vehicle, that operates on a railway or light rail and is used, or is proposed to be used, for either of the following purposes—

- (a) transporting passengers or freight on a railway or light rail track; or
- (b) maintenance work, or other work associated with, a railway or light rail.

“safety direction”, for chapter 7, part 3, see section 121.

“serious incident” means an incident that has caused, or could have caused, significant property damage, serious injury or death.

SCHEDULE 6 (continued)

“**ship**”, for chapter 8, see section 267.

“**show cause notice**”, for chapter 7, part 3, see section 121.

“**show cause period**”, for chapter 7, part 3, see section 121.

“**signed notice**” means a written notice signed by the person giving the notice.

“**State-controlled road**” means a road or land, or part of a road or land, declared under section 24 to be a State-controlled road, and, for chapter 6, part 5, division 2, subdivision 2, see section 53.

“**State government body**”, for chapter 6, means—

- (a) a department or a division, branch or other part of a department; or
- (b) a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or
- (c) a GOC;

but does not include a local government.

“**statement of corporate intent**”, for chapter 8, see section 267.

“**strategic port land**”, for chapter 8, see section 267.

“**suspend**”, for chapter 7, part 3, see section 121.

“**tenure**”, over boat harbour land, means a lease, licence, permit or other authority conferring a right of possession or occupation for the land.

“**toll plaza**”, for chapter 6, part 7, see section 92.

“**toll road**”, for chapter 6, part 7, see section 92.

“**toll road operator**”, for chapter 6, part 7, see section 92.

“**traffic**” includes the passing back and forth of persons, vehicles and animals.

“**train**” means a conveyance or group of connected conveyances that travels on a rail or rails of a railway or sugar tramway.

“**transport**” dangerous goods includes—

- (a) pack, load and unload the goods, and transfer them to or from a rail vehicle, for their transport; and

SCHEDULE 6 (continued)

- (b) mark packages, and unit loads, containing dangerous goods; and
- (c) placard containers and rail vehicles in which dangerous goods are transported.

“transport infrastructure” includes—

- (a) air, busway, light rail, miscellaneous, public marine, rail or road transport infrastructure; and
- (b) transport infrastructure relating to ports.

“transport purpose” includes any purpose for which the Minister is responsible.

“valid account”, for chapter 6, part 7, see section 92.

“vehicle”, see the *Transport Operations (Road Use Management) Act 1995*.

“watercourse” includes a lake, spring, stream or swale.

“watercraft” includes any thing that is water traffic or a device, for example, a sailboard, used for the movement of persons who are on or in water

“water traffic” includes a hovercraft and a vehicle, person, aircraft or other craft on or in water.

“wilfully” means deliberately or recklessly.

“works” includes activities.

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2005. Future amendments of the Transport Infrastructure Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	15 April 1994	27 April 1994
2	to 1994 Act No. 32	1 July 1994	26 July 1994
3	to 1994 Act No. 81	18 November 1994	27 January 1995
4	to 1995 Act No. 32	1 July 1995	7 July 1995
5	to 1995 Act No. 57	1 February 1996	1 February 1996
5A	to 1996 Act No. 13	23 May 1996	3 September 1996
5B	to 1996 Act No. 74	12 December 1996	25 April 1997
5C	to 1997 Act No. 9	1 July 1997	15 August 1997
6	to 1997 Act No. 66	12 December 1997	6 February 1998
6A	to 1998 Act No. 23	22 May 1998	25 June 1998
7	to 1998 Act No. 43	27 November 1998	8 January 1999
7A	to 1999 Act No. 42	4 June 1999	12 November 1999
7B	to 1999 Act No. 59	1 January 2000	4 February 2000
7C	to 2000 Act No. 6	1 July 2000	8 September 2000
7D	to 2000 Act No. 46	25 October 2000	8 November 2000

Reprint No.	Amendments included	Effective	Reprint date
7E	to 2000 Act No. 64	1 December 2000	15 December 2000
7F	to 2000 Act No. 64	1 January 2001	12 January 2001
7G	to 2000 Act No. 64	12 March 2001	23 March 2001
8	to 2001 Act No. 36	25 June 2001	7 September 2001
8A	to 2001 Act No. 93	21 December 2001	11 January 2002
8B	to 2001 Act No. 93	1 March 2002	15 March 2002
8C	to 2002 Act No. 15	24 June 2002	24 June 2002
			(Column discontinued) Notes
8D	to 2002 Act No. 29	1 October 2002	
8E	to 2002 Act No. 29	11 October 2002	
8F	to 2002 Act No. 29	14 October 2002	
8G	to 2002 Act No. 29	29 November 2002	
8H	to 2002 Act No. 72	13 December 2002	
8I	to 2003 Act No. 29	1 July 2003	
8J	to 2003 Act No. 64	16 October 2003	
8K	to 2003 Act No. 64	20 October 2003	
8L	to 2003 Act No. 64	28 November 2003	
9 rv	to 2003 Act No. 64	1 December 2003	
9A rv	to 2003 Act No. 64	1 January 2004	provs exp 31 December 2003
9B	to 2004 Act No. 5	13 May 2004	
9C	to 2004 Act No. 9	20 May 2004	
9D	to 2004 Act No. 9	1 July 2004	
9E	to 2004 Act No. 54	29 November 2004	
9F	to 2004 Act No. 54	1 January 2005	

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	3, 4, 5
Corrected minor errors	3, 4, 5
Renumbered provisions	3, 4, 9

6 List of legislation

Transport Infrastructure Act 1994 No. 8

date of assent 7 March 1994

ss 1–2 commenced on date of assent

s 132 sch 3 amdts of the Harbours Act 1955 never proclaimed into force and on 1994 No. 32 s 13(1) (as from 1 July 1994)

ss 86, 122, 132 sch 3 amdts of the State Transport (People-movers) Act 1984 and the Urban Public Passenger Transport Act 1984 and sch 3 amdt 5 of the Transport Infrastructure (Roads) Act 1991 commenced 7 November 1994 (1994 SL No. 378)

remaining provisions commenced 15 April 1994 (1994 SL No. 128)

amending legislation—

Transport Infrastructure Amendment Act 1994 No. 32

date of assent 30 June 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1994 (see s 2)

Queensland Investment Corporation Amendment Act 1994 No. 38 pts 1, 5

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 1994 (see s 2 and 1994 SL No. 341 ss 2, 8)

Transport Operations (Passenger Transport) Act 1994 No. 43 ss 1–2, 143 sch 3

date of assent 14 September 1994

ss 1–2 commenced on date of assent

amdts 5–8 commenced 1 July 1994 (see s 2(2))

remaining provisions commenced 7 November 1994 (1994 SL No. 378)

Transport Infrastructure Amendment Act (No. 2) 1994 No. 49

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 18 November 1994 (1994 SL No. 399)

Land Act 1994 No. 81 ss 1–2, 527 sch 5

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (1995 SL No. 185)

Transport Operations (Road Use Management) Act 1995 No. 9 ss 1–2, 92 sch 1 (this Act is amended, see amending legislation below)

date of assent 5 April 1995

commenced on date of assent (see s 2(1))

amending legislation—

Transport Infrastructure Amendment (Rail) Act 1995 No. 32 ss 1–2(1), 23 sch (amends 1995 No. 9 above)

date of assent 14 June 1995

commenced on date of assent (see s 2(1))

Transport Infrastructure Amendment (Rail) Act 1995 No. 32 pts 1–2

date of assent 14 June 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (see s 2(2) and 1995 SL No. 162 ss 2(3), 19)

Coastal Protection and Management Act 1995 No. 41 ss 1–2, 105 sch 1

date of assent 9 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1996 (1996 SL No. 8)

Transport Planning and Coordination Amendment Act 1995 No. 48 pts 1, 3

date of assent 22 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 15 December 1995 (1995 SL No. 365)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Primary Industries Legislation Amendment Act 1996 No. 13 pts 1, 10

date of assent 23 May 1996

commenced on date of assent

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Transport (Gladstone East End to Harbour Corridor) Act 1996 No. 74 ss 1, 10

date of assent 12 December 1996

commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(1), (4)
pt 23**

date of assent 15 May 1997

s 87(1) commenced 1 July 1997 (see s 2(4))

remaining provisions commenced on date of assent (see s 2(1))

Transport Legislation Amendment Act 1997 No. 66 pts 1, 4

date of assent 1 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 12 December 1997 (1997 SL No. 439)

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch

date of assent 23 March 1998

ss 1–2 commenced on date of assent

remaining amdts commenced 30 March 1998 (1998 SL No. 55)

**Government Owned Corporations and Other Legislation Amendment Act 1998
No. 21 ss 1, 2(3), pt 4**

date of assent 1 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 22 May 1998 (1998 SL No. 144)

Transport Infrastructure Amendment Act 1998 No. 23

date of assent 14 May 1998

ss 5(1)–(2), 7 commenced on 1 July 1994 (see s 2)

remaining provisions commenced on date of assent

**Integrated Planning and Other Legislation Amendment Act 1998 No. 31 ss 1, 2(5)
pt 8**

date of assent 3 September 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 12 October 1998 (1998 SL No. 270)

Transport Legislation Amendment Act 1998 No. 33 ss 1–2 pt 2

date of assent 23 September 1998

ss 1–2, 15 commenced on date of assent

s 9 commenced 31 March 1998 (see s 2(1))

remaining provisions commenced 1 July 1998 (see s 2(4))

Transport Legislation Amendment Act (No. 2) 1998 No. 43 s 1 pt 4

date of assent 27 November 1998

commenced on date of assent

**Integrated Planning and Other Legislation Amendment Act 1999 No. 11 ss 1–2(1)
pt 5**

date of assent 30 March 1999

ss 1–2, 26, 31–32 commenced on date of assent (see s 2(1))

remaining provisions commenced 1 December 1999 (1999 SL No. 280)

Statutory Instruments and Another Act Amendment Act 1999 No. 24 ss 1, 2(2) sch

date of assent 4 June 1999

commenced on date of assent

Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

Sugar Industry Act 1999 No. 51 ss 1, 2(2), 228 sch 1

date of assent 18 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2000 (see s 2(2))

**Local Government and Other Legislation Amendment Act (No. 2) 1999 No. 59
ss 1, 2(7), pt 11**

date of assent 29 November 1999

commenced on date of assent

Local Government and Other Legislation Amendment Act 2000 No. 4 ss 1, 2(4) pt 9

date of assent 16 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2000 (2000 SL No. 292)

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3

date of assent 23 March 2000

ss 1–2, 461 commenced on date of assent (see s 2(2))

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

Transport Legislation Amendment Act 2000 No. 6 ss 1, 2(2) pt 3

date of assent 20 April 2000

ss 1–2 commenced on date of assent

ss 25 (to the extent it ins new ch 8B pt 1), 26, 34, 35(2), 35(3) (to the extent it ins ss 19, 20 and 22), 38(2) (to the extent it ins the defs “public marine facility”, “public marine transport infrastructure” and “tenure”) commenced 1 January 2001 (2000 SL No. 338)

remaining provisions commenced 1 July 2000 (2000 SL No. 150)

Transport (Busway and Light Rail) Amendment Act 2000 No. 40 pts 1–2 (this Act is amended, see amending legislation below)

date of assent 13 October 2000

ss 1–2 commenced on date of assent

pt 2 hdg, ss 3, 12 and 16 commenced 12 March 2001 (2001 SL No. 9)

s 19 (to the extent it ins the def “busway”) commenced 21 December 2001 (2001 SL No. 278)

s 19 (to the extent it om the def “plant”) (amdt could not be given effect)

remaining provisions commenced 14 October 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 183 s 2))

amending legislation—

Transport Legislation Amendment Act 2001 No. 79 ss 1, 2(3), pt 5 (amends 2000 No. 40 above)

date of assent 29 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 11 October 2002 (2002 SL No. 271)

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch

date of assent 25 October 2000

commenced on date of assent

Environmental Protection and Other Legislation Amendment Act 2000 No. 64 ss 1, 2(2), pt 6

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2001 (2000 SL No. 350)

Transport Infrastructure and Another Act Amendment Act 2001 No. 36 pts 1–2

date of assent 7 June 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 25 June 2001 (2001 SL No. 78)

Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

Transport Legislation Amendment Act 2001 No. 79 ss 1, 2(3), pt 7 (this Act is amended, see amending legislation below)

date of assent 29 November 2001

ss 1–2 commenced on date of assent

pt 7 hdg, ss 24, 27–29, 31–33, 35–36, 38, 41, 42(1) (to the extent it om the def “future railway land”), 42(2) (to the extent it ins the def “future railway land”) and 43 commenced 21 December 2001 (2001 SL No. 279)

ss 25A, 42(4) commenced 24 June 2002 (2002 SL No. 139)

s 30 never proclaimed into force and om 2002 No. 15 s 30 (as from 24 June 2002)

ss 37, 39, 40, 42(1) (except to the extent it om the def “future railway land”), 42(2) (except to the extent it ins the def “future railway land”) and 42(3) commenced 11 October 2002 (2002 SL No. 271)

remaining provisions commenced 29 November 2002 (2002 SL No. 306)

amending legislation—

Transport Legislation Amendment Act 2002 No. 15 ss 1, 2(2), pt 6 (amends 2001 No. 79 above)

date of assent 17 May 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 24 June 2002 (2002 SL No. 140)

Costal Protection and Management and Other Legislation Amendment Act 2001 No. 93 ss 1–2, 25(c)

date of assent 10 December 2001

ss 1–2 commenced on date of assent

remaining provision commenced 20 October 2003 (2003 SL No. 202)

(proposed commencement 11 December 2003 (automatic commencement under AIA s 15DA(2) (2002 SL No. 359 s 2)))

Land Protection (Pest and Stock Route Management) Act 2002 No. 12 ss 1–2, 329 sch 2 (this Act is amended, see amending legislation below)

date of assent 24 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2003 SL No. 116) (provisions were to commence 25 April 2004 (automatic commencement under AIA s 15DA(2) (2003 SL No. 58 s 2)))

amending legislation—

Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch (amends 2002 No. 12 above)

date of assent 17 May 2002

commenced on date of assent

Transport Legislation Amendment Act 2002 No. 15 ss 1, 2(2), pt 5

date of assent 9 May 2003

ss 1–2 commenced on date of assent

s 23 commenced 29 November 2002 (2002 SL No. 307)

remaining provisions commenced 24 June 2002 (2002 SL No. 140)

Maritime Safety Queensland Act 2002 No. 29 ss 1–2, 16 sch 1

date of assent 6 August 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 2002 (2002 SL No. 249)

Transport Legislation Amendment Act (No. 2) 2002 No. 71 s 1, pt 4

date of assent 13 December 2002
 commenced on date of assent

Environmental Legislation Amendment Act 2002 No. 72 s 1, pt 6

date of assent 13 December 2002
 commenced on date of assent

Gas Supply Act 2003 No. 29 ss 1–2, ch 8 pt 7

date of assent 23 May 2003
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 2003 (2003 SL No. 121)

**Queensland Heritage and Other Legislation Amendment Act 2003 No. 32 pts 1, 7
 (amendment by amending legislation below could not be given effect)**

date of assent 23 May 2003
 ss 1–2 commenced on date of assent
 remaining provisions commenced 28 November 2003 (2003 SL No. 267)

amending legislation—

**Transport Infrastructure Act 1994 No. 8 s 200A(3) sch 2B (amendment of 2003
 No. 32 above could not be given effect) (this Act is amended, see amending
 legislation below)**

amending legislation—

**Transport Infrastructure and Another Act Amendment Act 2003 No. 54
 ss 1–2, 34, 39 (amends 1994 No. 8 above)**

date of assent 18 September 2003
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 December 2003 (2003 SL No. 294)

Transport Infrastructure and Another Act Amendment Act 2003 No. 54 pts 1–2

date of assent 18 September 2003
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 December 2003 (2003 SL No. 294)

**Integrated Planning and Other Legislation Amendment Act 2003 No. 64 ss 1, 2(3)(f),
 pt 10**

date of assent 16 October 2003
 ss 1–2 commenced on date of assent
 remaining provisions commenced on date of assent (see s 2(3)(f))

Sugar Industry Reform Act 2004 No. 3 ss 1, 2(3), 37 sch

date of assent 6 May 2004
 ss 1–2 commenced on assent
 remaining provisions commenced 1 January 2005 (see s 2(3))

Aurukun Associates Agreement Repeal Act 2004 No. 5 ss 1, 8 sch

date of assent 13 May 2004
 commenced on date of assent

Transport and Other Legislation Amendment Act 2004 No. 9 pts 1–2, s 3 sch

date of assent 20 May 2004

ss 1–2 commenced on date of assent

sch commenced 1 July 2004 (2004 SL No. 80)

remaining provisions commenced on date of assent

Transport and Other Legislation Amendment Act (No. 2) 2004 No. 40 pts 1, 2

date of assent 27 October 2004

ss 1–2 commenced on assent

remaining provisions not yet proclaimed into force (see s 2)**Statute Law (Miscellaneous Provisions) Act 2004 No. 53**

date of assent 29 November 2004

commenced on date of assent

Transport Infrastructure Amendment Act 2004 No. 54 ss 1–10

date of assent 29 November 2004

commenced on date of assent

7 List of annotations

This reprint has been renumbered—see tables of renumbered provisions in endnote 9.

Title amd 2000 No. 6 s 7

Objectives of this Act

s 2 prev s 2 om R4 (see RA s 37)
pres s 2 amd 1995 No. 32 s 4; 2000 No. 6 s 8; 2000 No. 40 s 4; 2003 No. 54
s 4

Definitions—the dictionary

s 3 amd 1994 No. 32 s 4(3); 1994 No. 49 s 3 sch 1
sub 1995 No. 9 s 92 sch 1

Contents of transport infrastructure strategies

s 6 amd 1995 No. 48 s 10

Obligations about government supported transport infrastructure

s 9 amd 1995 No. 32 s 5; 2000 No. 6 s 9

Report on giving effect to s 9

s 10 amd 1995 No. 32 s 6; 2000 No. 6 s 10

CHAPTER 4—IMPLEMENTATION OF TRANSPORT INFRASTRUCTURE STRATEGIES**PART 2—RAIL IMPLEMENTATION PROGRAMS**

pt hdg ins 1995 No. 32 s 7

Development of programs

s 14 ins 1995 No. 32 s 7

Consistency with transport infrastructure strategies

s 15 ins 1995 No. 32 s 7

Report on implementation of programs

s 16 ins 1995 No. 32 s 7

Transport GOCs

s 20 amd 1995 No. 32 s 8

CHAPTER 5—AIR TRANSPORT INFRASTRUCTURE

ch 5 (ss 21–22) ins 2000 No. 6 s 11

CHAPTER 6—ROAD TRANSPORT INFRASTRUCTURE**PART 1—PRELIMINARY****Definitions for ch 6**

prov hdg sub 1995 No. 32 s 9(1)

s 22 amd 1995 No. 9 s 92 sch 1

om 2001 No. 79 s 25

def “**ancillary works and encroachments**” amd 1995 No. 32 s 9(3); 2000 No. 6 s 12(1)–(6); 2002 No. 12 s 329 sch 2 (amdt could not be given effect) om 2001 No. 79 s 25def “**construction**” om 2001 No. 79 s 25def “**land**” om 1995 No. 9 s 92 sch 1def “**maintenance**” om 1995 No. 32 s 9(2)def “**means of access**” om 2000 No. 6 s 12(7)def “**occupier**” om 1995 No. 9 s 92 sch 1def “**on**” om 1995 No. 32 s 9(2)def “**owner**” om 1995 No. 9 s 92 sch 1def “**person**” om 1995 No. 9 s 92 sch 1def “**plant**” om 2000 No. 40 s 5def “**public utility plant**” om 2000 No. 40 s 5def “**road access works**” ins 2000 No. 6 s 12(8)

om 2001 No. 79 s 25

def “**road franchise agreement**” ins 1994 No. 49 s 4

om 2001 No. 79 s 25

def “**road works**” om 2001 No. 79 s 25def “**State government body**” om 2001 No. 79 s 25def “**traffic**” om 2001 No. 79 s 25**State-controlled roads on rail corridor land**

s 26 ins 2001 No. 79 s 25A

Prohibition on road works etc. on State-controlled roads

s 33 amd 1995 No. 9 s 92 sch 1

Impact of certain local government decisions on State-controlled roads

s 42 amd 1998 No. 13 s 191 sch; 1999 No. 11 s 27

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- s 242** ins 2001 No. 79 s 29

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- s 245** prev s 135 ins 1994 No. 32 s 10
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s 173 ins 1994 No. 32 s 5
om 2000 No. 4 s 93

Division 2—General

div hdg ins 1994 No. 32 s 5

Restrictions on dealing in property

s 288 ins 1994 No. 32 s 5

Port marine operational area

s 289 ins 2002 No. 71 s 13

PART 5—GENERAL

pt hdg ins 1994 No. 32 s 5

Protection from liability

s 290 ins 1994 No. 32 s 5

Carrying on port activities outside port limits

s 291 ins 1994 No. 32 s 5

Offences

s 292 ins 1994 No. 32 s 5

Payment of charges and interest on unpaid charges

s 293 ins 1994 No. 32 s 5

Transitional provisions applying in relation to port authorities that are candidate GOCs

s 294 ins 1994 No. 32 s 5
amd 1994 No. 43 s 143 sch 3

Notices at entrances

s 295 ins 1994 No. 32 s 5

CHAPTER 9—BUSWAYS AND BUSWAY TRANSPORT INFRASTRUCTURE

ch hdg ins 2000 No. 40 s 13

PART 1—PRELIMINARY

pt hdg ins 2000 No. 40 s 13

Definition for ch 7A

s 180A ins 2000 No. 40 s 13 (om 2001 No. 79 s 19(1))

Ways of achieving busway objectives

s 296 ins 2000 No. 40 s 13

PART 2—CHIEF EXECUTIVE'S FUNCTIONS AND POWERS

pt 2 (ss 297–300) ins 2000 No. 40 s 13

PART 3—ESTABLISHMENT OF BUSWAYS

pt 3 (ss 301–304) ins 2000 No. 40 s 13

PART 4—MANAGEMENT OF BUSWAY LAND AND BUSWAY TRANSPORT INFRASTRUCTURE

pt hdg ins 2000 No. 40 s 13

Division 1—Transport infrastructure interaction

div hdg ins 2000 No. 40 s 13

Altering road levels by a local government

s 305 ins 2000 No. 40 s 13

Watercourses and busway transport infrastructure works

s 306 ins 2000 No. 40 s 13 (amd 2001 No. 79 s 19(2))

Permitted construction by local government of roads over or under busway land

s 307 ins 2000 No. 40 s 13

Powers of chief executive for busway transport infrastructure works contracts etc.

s 308 ins 2000 No. 40 s 13 (amd 2001 No. 79 s 19(3))

Distraction of traffic on busway

s 309 ins 2000 No. 40 s 13 (amd 2001 No. 79 s 19(3))

No presumption of dedication of road

s 310 ins 2000 No. 40 s 13

Division 2—Interfering with busway transport infrastructure**div hdg** ins 2000 No. 40 s 13**Interfering with busway transport infrastructure****s 311** ins 2000 No. 40 s 13 (amd 2001 No. 79 s 19(4))**Rectifying unauthorised interference or works****s 1312** ins 2000 No. 40 s 13**Division 3—Ancillary works and encroachments****div 3 (ss 313–315)** ins 2000 No. 40 s 13 (amd 2001 No. 79 s 19(5))**Division 4—Public utility plant****div 4 (ss 316–328)** ins 2000 No. 40 s 13**Division 5—Use of busway land****div hdg** ins 2000 No. 40 s 13**Trespass on busway land****s 329** ins 2000 No. 40 s 13 (amd 2001 No. 79 s 19(6))**Division 6—Compensation entitlements****div 6 (ss 330–335)** ins 2000 No. 40 s 13**PART 5—BUSWAY SERVICE PROVIDER AUTHORISATION****pt 5 (ss 336–346)** ins 2000 No. 40 s 13 (amd 2001 No. 79 s 19(7))**CHAPTER 10—LIGHT RAIL AND LIGHT RAIL TRANSPORT
INFRASTRUCTURE****ch hdg** ins 2000 No. 40 s 13**PART 1—PRELIMINARY****pt hdg** ins 2000 No. 40 s 13**Definition for ch 7B****s 180ZL** ins 2000 No. 40 s 13 (om 2001 No. 79 s 19(8))**Ways of achieving light rail objectives****s 347** ins 2000 No. 40 s 13**PART 2—CHIEF EXECUTIVE'S FUNCTIONS AND POWERS****pt 2 (ss 348–351)** ins 2000 No. 40 s 13**PART 3—ESTABLISHMENT OF LIGHT RAIL****pt 3 (ss 352–356)** ins 2000 No. 40 s 13**PART 4—MANAGEMENT OF LIGHT RAIL LAND AND LIGHT RAIL
TRANSPORT INFRASTRUCTURE****pt 4 (ss 357–383)** ins 2000 No. 40 s 13**PART 5—ACCREDITATION PROVISIONS FOR LIGHT RAIL****pt 5 (ss 384–399)** ins 2000 No. 40 s 13**PART 6—LIGHT RAIL INCIDENTS****pt hdg** ins 2000 No. 40 s 13

Application of ch 7, pt 6 and other provisions

s 400 ins 2000 No. 40 s 13
amd 2003 No. 54 s 31; 2004 No. 9 s 3 sch

CHAPTER 11—INVESTIGATING POTENTIAL BUSWAY OR LIGHT RAIL

ch 11 (ss 401–414) ins 2000 No. 40 s 13

CHAPTER 12—MISCELLANEOUS TRANSPORT INFRASTRUCTURE

ch hdg ins 1995 No. 9 s 92 sch 1

PART 1—PRELIMINARY

pt hdg ins 1998 No. 43 s 12

Definitions for ch 12

prov hdg sub 1998 No. 43 s 13(1)
s 415 ins 1995 No. 9 s 92 sch 1
def “**approval**” ins 1998 No. 43 s 13(3)
def “**approval conditions**” ins 1998 No. 43 s 13(3)
def “**dispute notice**” ins 1998 No. 43 s 13(3)
def “**intersecting area**” ins 1998 No. 43 s 13(3)
def “**licence**” ins 1995 No. 9 s 92 sch 1
om 1998 No. 43 s 13(2)
def “**licensee**” ins 1995 No. 9 s 92 sch 1
sub 1998 No. 43 s 13(2)–(3)
def “**operational licence**” ins 1998 No. 43 s 13(3)
def “**required land**” ins 1995 No. 9 s 92 sch 1
def “**responsible entity**” ins 1998 No. 43 s 13(3)

Meaning of “miscellaneous transport infrastructure”

s 416 ins 1998 No. 43 s 14
amd 2000 No. 6 s 24; 2000 No. 40 s 14

PART 2—OPERATIONAL LICENCES AND APPROVALS FOR LICENSEES

pt hdg ins 1998 No. 43 s 15

Division 1—Definitions

div hdg ins 1998 No. 43 s 15

Definition for pt 2

s 417 ins 1998 No. 43 s 15
amd 2001 No. 79 s 33

Division 2—Granting operational licences

div hdg ins 1998 No. 43 s 16

Minister may grant operational licence

prov hdg sub 1998 No. 43 s 17
s 418 ins 1995 No. 9 s 92 sch 1

Division 3—Approvals for licensees for intersecting areas

div hdg ins 1998 No. 43 s 18

Purpose and scope of div 3

s 419 ins 1998 No. 43 s 18

Approvals

s 420 ins 1998 No. 43 s 18

Refusal to grant approval

s 421 ins 1998 No. 43 s 18

Licensee may apply to Minister if approval not granted

s 422 ins 1998 No. 43 s 18

Division 4—Conditions for approvals

div hdg ins 1998 No. 43 s 18

Approval conditions

s 423 ins 1998 No. 43 s 18

Notice of approval conditions

s 424 ins 1998 No. 43 s 18

Division 5—Arbitration of approval conditions

div hdg ins 1998 No. 43 s 18

Notice of dispute

s 425 ins 1998 No. 43 s 18

Appointment of arbitrator

s 426 ins 1998 No. 43 s 18

Arbitrator's functions

s 427 ins 1998 No. 43 s 18

Arbitrator's powers

s 428 ins 1998 No. 43 s 18

Hearing procedures

s 429 ins 1998 No. 43 s 18

Effect of arbitrator's decisions

s 430 ins 1998 No. 43 s 18

Division 6—Miscellaneous

div hdg ins 1998 No. 43 s 18

Miscellaneous transport infrastructure remains property of licensee

s 431 ins 1998 No. 43 s 18

Compensation to responsible entity from licensee

s 432 ins 1998 No. 43 s 18

PART 3—AUTHORITIES TO OCCUPY AND USE LAND

pt hdg ins 1998 No. 43 s 18

Temporary use and occupation of land

s 433 ins 1995 No. 9 s 92 sch 1

Notice of entry or permission to enter

s 434 ins 1995 No. 9 s 92 sch 1

Compensation for physical damage from entry etc.

s 435 ins 1995 No. 9 s 92 sch 1

PART 4—POWERS OF CHIEF EXECUTIVE OVER REQUIRED LAND

pt hdg ins 1998 No. 43 s 19

Chief executive may grant interests in lands 436 ins 1995 No. 9 s 92 sch 1
amd 1998 No. 43 s 20**PART 5—MISCELLANEOUS**

pt hdg ins 1998 No. 43 s 21

Effect of chapter on other Acts

s 437 ins 1995 No. 9 s 92 sch 1

CHAPTER 13—FUNCTION OF QUEENSLAND RAIL

ch hdg ins 1998 No. 21 s 39

Function

s 438 ins 1998 No. 21 s 39

CHAPTER 14—TRANSPORTING DANGEROUS GOODS BY RAIL

ch hdg ins 2001 No. 79 s 34

PART 1—INTRODUCTORY

pt hdg ins 2001 No. 79 s 34

Purposes of ch 14

s 439 ins 2001 No. 79 s 34

Application of ch 14s 440 ins 2001 No. 79 s 34
amd 2003 No. 29 s 385**Ch 14 binds all persons**

s 441 ins 2001 No. 79 s 34

PART 2—REGULATIONS

pt 2 (s 442) ins 2001 No. 79 s 34

PART 3—APPROVALS AND EXEMPTIONS

pt 3 (ss 443–449) ins 2001 No. 79 s 34

PART 4—OFFENCES

pt 4 (ss 450–452) ins 2001 No. 79 s 34

PART 5—RECOVERY OF COSTS AND FORFEITURE

pt 5 (ss 453–456) ins 2001 No. 79 s 34

PART 6—MISCELLANEOUS

pt 6 (ss 457–458) ins 2001 No. 79 s 34

CHAPTER 15—PUBLIC MARINE TRANSPORT INFRASTRUCTURE

ch hdg ins 2000 No. 6 s 25

PART 1—PUBLIC MARINE FACILITIES

pt 1 (ss 459–469) ins 2000 No. 6 s 25

PART 2—MANAGEMENT OF WATERWAYS**pt hdg** ins 2000 No. 6 s 25**Object of pt 2****s 470** ins 2000 No. 6 s 25**Functions of chief executive under pt 2****s 471** ins 2000 No. 6 s 25**Waterway transport management plan****s 472** ins 2000 No. 6 s 25**Contents of a waterway transport management plan****s 473** ins 2000 No. 6 s 25**Notice of draft waterway transport management plan****s 474** ins 2000 No. 6 s 25
amd 2001 No. 79 s 35**Other laws prevail over waterway transport management plan****s 475** ins 2000 No. 6 s 25**CHAPTER 16—GENERAL PROVISIONS****ch hdg** (prev ch 9 hdg) (prev ch 7 hdg) renum 1995 No. 9 s 92 sch 1**Amounts payable to chief executive are debts owing to the State****s 476** sub 1999 No. 11 s 29**Power to require information from local governments****s 477** amd 1999 No. 11 s 30**Approval of forms****s 479** ins 1998 No. 43 s 22**Disposal of fees, penalties etc.****s 480** amd 1997 No. 66 s 50
sub 2000 No. 6 s 26
amd 2001 No. 79 s 36**No need to prove appointments****s 481** ins 1995 No. 32 s 14
amd 2003 No. 54 s 32; 2004 No. 9 s 3 sch**Prosecutions for offences committed while travelling on a railway****prov hdg** amd 2003 No. 54 s 33**s 482** ins 1995 No. 32 s 14**Proceedings for offences****s 483** ins 1994 No. 32 s 6**Attempts to commit offences****s 484** ins 1994 No. 32 s 6**Review of and appeals against decisions****s 485** sub 1997 No. 66 s 51**Time for making appeals****s 197** om 1997 No. 66 s 51

Procedure of Planning and Environment Court

s 198 om 1997 No. 66 s 51

Application of Freedom of Information Act and Judicial Review Acts 486 ins 1995 No. 32 s 15
amd 2000 No. 46 s 3 sch**Altering watercourse to adversely affect transport route**

s 487 ins 2001 No. 79 s 37

Altering materials etc.

s 488 ins 2001 No. 79 s 37

Recovery of cost of damage

s 489 ins 2001 No. 79 s 37

Renumbering of Acts 491 ins 2000 No. 40 s 15
sub 2003 No. 54 s 34
exp 31 December 2003 (see s 491(4))**CHAPTER 17—SAVINGS AND TRANSITIONAL PROVISIONS, AMENDMENTS
AND REPEALS**ch 17 hdg (prev ch 8 hdg) amd 1994 No. 32 s 7
(prev ch 10) renum 1995 No. 9 s 92 sch 1**PART 1—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT ROADS**pt hdg amd 1994 No. 32 s 8
om 2003 No. 54 s 35**Definition**prov hdg amd 1994 No. 32 s 9(1)
s 201 amd 1994 No. 32 s 9(2)
om 2003 No. 54 s 35
def “**corporation**” amd 1994 No. 43 s 143 sch 3
om 2003 No. 54 s 35**State-controlled roads**s 202 prev (1) om 1994 No. 49 s 3 sch 1
AIA s 20A applies to prev (1) (see prev s 126(1))
pres (1)–(2) exp 18 November 1995 (see s 202(2))**Access to and from State-controlled roads**s 203 amd 1994 No. 49 s 3 sch 1
exp 18 November 1996 (see s 203(5))
(1)–(3) AIA s 20A applies (see s 203(4))**Motorways**s 204 amd 1994 No. 49 s 3 sch 1
exp 18 November 1996 (see s 204(3))
(1) AIA s 20A applies (see s 204(2))**Notices to local governments**s 205 amd 1994 No. 49 s 3 sch 1
exp 18 November 1996 (see s 205(2))

Naturally occurring materials

- s 206** amd 1994 No. 49 s 3 sch 1
 exp 18 November 1996 (see s 206(2))
 AIA s 20A applies (see prev s 126(1))

Temporary occupation and use of land

- s 207** amd 1994 No. 49 s 3 sch 1
 exp 18 November 1995 (see s 207(4))

Things done where chief executive now has power

- s 208** amd 1994 No. 49 s 3 sch 1
 exp 18 November 1996 (see s 208(2))

Legal proceedings

- s 209** amd 1994 No. 49 s 3 sch 1
 exp 18 November 1996 (see s 209(2)–(3))

Land acquisitions and related transactions

- s 210** amd 1994 No. 49 s 3 sch 1
 exp 18 November 1996 (see s 210(3)–(4))

Delegations

- s 211** amd 1994 No. 49 s 3 sch 1
 exp 18 November 1996 (see s 211(3))

Preparation of first implementation programs

- s 212** amd 1994 No. 49 s 3 sch 1
 exp 18 November 1996 (see s 212(2))

Existing franchised road

- s 213** ins 1994 No. 49 s 3 sch 1
 exp 18 November 1995 (see s 213(5))

PART 2—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT RAILWAYS

- pt hdg** ins 1995 No. 32 s 16
 om 2003 No. 54 s 35

Division 1—Provisions about land

- div hdg** ins 1995 No. 32 s 16
 exp 30 June 2003 (see s 218(2))

Existing rail corridor land

- s 214** ins 1995 No. 32 s 16
 amd 1997 No. 66 s 52
 exp 30 June 2003 (see s 218(2))
 AIA s 20A applies (see s 218(1))

Boundary identification etc.

- s 215** ins 1995 No. 32 s 16
 amd 2000 No. 40 s 16; 2002 No. 15 s 26
 exp 30 June 2003 (see s 218(2))
 AIA s 20A applies (see s 218(1))

Effect of land becoming unallocated State land

- s 216** ins 1995 No. 32 s 16

exp 30 June 2003 (see s 218(2))
AIA s 20A applies (see s 218(1))

Exemption from fees

s 217 ins 1995 No. 32 s 16
exp 30 June 2003 (see s 218(2))
AIA s 20A applies (see s 218(1))

Expiry of division etc.

s 218 ins 1995 No. 32 s 16
amd 2002 No. 15 s 27
exp 30 June 2003 (see s 218(2))
AIA s 20A applies (see s 218(1))

Division 2—Other provisions

div hdg ins 1995 No. 32 s 16
om 2003 No. 54 s 35

Interim accreditation

s 219 ins 1995 No. 32 s 16
exp 1 July 1997 (see s 219(6)–(7))

Advertising on railway land

s 220 ins 1995 No. 32 s 16
exp 1 July 2000 (see s 220(4))

Continuation of Transport Infrastructure (Railways) Act 1991, ss 49 and 51

s 221 ins 1995 No. 32 s 16
amd 2002 No. 15 s 28
exp 30 June 2003 (see s 221(4) and 1995 SL No. 342 s 4)

Continuation of Transport Infrastructure (Railways) Act 1991, ss 47, 48 and 50

s 222 ins 1995 No. 32 s 16
exp 1 July 2000 (see s 222(5))

Existing contracts

s 223 ins 1995 No. 32 s 16
exp 1 July 2002 (see s 223(3))
AIA s 20A applies (see s 223(2))

Existing transaction documents

s 224 ins 1995 No. 32 s 16
exp 1 July 2002 (see s 224(9))
AIA s 20A applies (see s 224(5))

Existing regulations

s 225 ins 1995 No. 32 s 16
amd 1995 No. 48 s 11
exp 22 November 1996 (see s 225(4))

Transitional regulations

s 226 ins 1995 No. 32 s 16
exp 1 July 1996 (see s 226(3))

PART 1—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT PORTS

pt hdg prev pt 2 hdg renum as pt 4 hdg 1994 No. 32 s 11
pres pt 1 (prev pt 3) hdg ins 1994 No. 32 s 10

Definitions

s 227 ins 1994 No. 32 s 10
amd 1996 No. 13 s 57
prev s 227 exp 1 July 1997 (see s 227(2))
AIA s 20A applies (see s 240(1))
pres s 227 ins 1998 No. 23 s 4
def “**1986 permit**” ins 1998 No. 23 s 4
def “**1992 permit**” ins 1998 No. 23 s 4
def “**1994–95 permit**” ins 1998 No. 23 s 4
def “**1996–97 permit**” ins 1998 No. 23 s 4
def “**permit**” ins 1998 No. 23 s 4
om 2001 No. 79 s 38

Continuation of harbours under Harbours Act or port under Port of Brisbane Authority Act etc.

s 228 ins 1994 No. 32 s 10
amd 1996 No. 13 s 57; 1997 No. 9 s 84; 1998 No. 33 s 10; 1999 No. 24 s 2(2)
sch; 2000 No. 6 s 27
exp 31 December 2000 (see s 228(3))
AIA s 20A applies (see s 240(1))

Management of certain boat harbours

s 229 ins 1994 No. 32 s 10
amd 1996 No. 13 s 57
exp 1 July 1997 (see s 229(2))
AIA s 20A applies (see s 240(1))

Harbour and industrial lands

s 230 ins 1994 No. 32 s 10
amd 1996 No. 13 s 57
exp 1 July 1997 (see s 230(5))
AIA s 20A applies (see s 240(1))

Submission of land use plans

s 231 ins 1994 No. 32 s 10
amd 1996 No. 13 s 57
exp 1 July 1997 (see s 231(3))
AIA s 20A applies (see s 240(1))

Harbours Corporation of Queensland

s 232 ins 1994 No. 32 s 10
amd 1996 No. 13 s 57; 1997 No. 9 s 85; 1998 No. 33 s 11; 1999 No. 24 s 2(2)
sch; 2000 No. 6 s 28
exp 31 December 2000 (see s 232(8))
AIA s 20A applies (see s 240(1))

Continuation of certain by-laws and provisions of Harbours Act

prov hdg sub 1998 No. 23 s 5(1) (retro)
s 233 ins 1994 No. 32 s 10

amd 1994 No. 43 s 143 sch 3 (retro); 1996 No. 13 s 57; 1997 No. 9 s 86; 1998 No. 23 s 5(2)(retro)-(3); 1998 No. 33 s 12; 1999 No. 11 s 31; 2000 No. 64 s 172

amd 2002 No. 72 s 31

om 2001 No. 93 s 25(c)

AIA s 20A applies (see s 240(1))

Validation of permits issued for Mackay Harbour

s 233A ins 1998 No. 23 s 6
exp 15 May 1998 (see s 233A(4))
AIA s 20A applies (see s 240(1))

Certain persons taken to have permits for Mackay Harbour

s 233B ins 1998 No. 23 s 6
exp 15 May 1998 (see s 233B(3))
AIA s 20A applies (see s 240(1))

Certain persons taken to have had permits for Brisbane River under By-law No. 2, 1994

s 233C ins 1998 No. 23 s 6
exp 15 May 1998 (see 233C(5))
AIA s 20A applies (see s 240(1))

Certain persons taken to have had permits for Brisbane River under Port of Brisbane Sand and Gravel By-law 1992

s 233D ins 1998 No. 23 s 6
exp 15 May 1998 (see s 233D(4))
AIA s 20A applies (see s 240(1))

Certain persons taken to have permits for Brisbane River under Marine Land Dredging By-law 1987

s 233E ins 1998 No. 23 s 6
exp 15 May 1998 (see s 233E(4))
AIA s 20A applies (see s 240(1))

Survey and supervision cost to be retained by Port of Brisbane Corporation

s 233F ins 1998 No. 23 s 6
exp 15 May 1998 (see s 233F(2))
AIA s 20A applies (see s 240(1))

Continuation of certain provisions of Harbours Act about land

s 234 ins 1994 No. 32 s 10
amd 1994 No. 81 s 527 sch 5; 1996 No. 13 s 57
exp 1 July 1997 (see s 234(4))
AIA s 20A applies (see s 240(1))

Continuation of certain provisions of Harbours Act about jetties and ramps etc.

s 235 ins 1994 No. 32 s 10
amd 1994 No. 43 s 143 sch 3 (retro); 1996 No. 13 s 57; 1997 No. 9 s 87; 1998 No. 33 s 13; 1999 No. 24 s 2(2) sch; 2000 No. 6 s 29
(3) exp 1 July 1997 (see s 235(5A))
exp 31 December 2000 (see s 235(5))
AIA s 20A applies (see s 240(1))

Continuation of certain provisions of Harbours Act requiring approval for certain matters

- s 236** ins 1994 No. 32 s 10
 amd 1995 No. 41 s 105 sch 1; 1997 No. 9 s 88; 1998 No. 23 s 7 (retro); 1999 No. 11 s 32; 1999 No. 59 s 59; 2000 No. 64 s 173
 amd 2002 No. 72 s 32
 om 2001 No. 93 s 25(c)
 AIA s 20A applies (see s 240(1))

Continuation of certain provisions of Harbours Act about Queensland Sugar Corporation

- s 237** ins 1994 No. 32 s 10
 amd 1996 No. 13 s 56
 exp 31 October 1996 (see s 237(4))
 AIA s 20A applies (see s 240(1))

Continuation of s 62A of Harbours Act

- s 238** ins 1994 No. 32 s 10
 amd 1996 No. 13 s 57
 exp 1 July 1997 (see s 238(3))
 AIA s 20A applies (see s 240(1))

Application of Acts Interpretation Act, s 20A to this part

- s 240** ins 1994 No. 32 s 10
 amd 1996 No. 13 s 57; 1997 No. 9 s 89; 1998 No. 33 s 14; 1999 No. 24 s 2(2) sch; 2000 No. 6 s 30
 exp 30 June 2001 (see s 240(2))
 AIA s 20A applies (see s 240(1))

Continuation of pt 5, div 2 of Port of Brisbane Authority Act

- s 492** ins 1994 No. 32 s 10
exp on a date to be fixed by regulation (see s 239(3))
 AIA s 20A applies (see s 240(1))

Expiries under this part

- s 493** ins 2000 No. 6 s 31
 AIA s 20A applies (see s 240(1))

PART 2—GENERAL SAVINGS AND TRANSITIONAL PROVISIONS

- pt hdg** ins 1994 No. 32 s 10

Division 1—Transition of references about roads

- div hdg** ins 1994 No. 32 s 10

Application of division

- s 494** ins 1994 No. 32 s 10

Transport Infrastructure (Roads) Act 1991 references

- s 495** ins 1994 No. 32 s 10
 amd 1995 No. 9 s 92 sch 1

Main Roads Act 1920 references

- s 496** ins 1994 No. 32 s 10
 sub 1995 No. 9 s 92 sch 1; 1995 No. 57 s 4 sch 1

Commissioner of Main Roads references

s 497 ins 1994 No. 32 s 10

Declared road references

s 498 ins 1994 No. 32 s 10

Motorway references

s 499 ins 1994 No. 32 s 10

Main Roads Fund references

s 500 ins 1994 No. 32 s 10

Division 2—Transition of references about railways

div hdg ins 1995 No. 32 s 17

Application of division

s 501 ins 1995 No. 32 s 17

Railways Act 1914 references

s 502 ins 1995 No. 32 s 17

Transport Infrastructure (Railways) Act 1991 references

s 503 ins 1995 No. 32 s 17

Commissioner for railways references

s 504 ins 1995 No. 32 s 17

Railways Department references

s 505 ins 1995 No. 32 s 17

Queensland Railways references

s 506 ins 1995 No. 32 s 17

Division 3—Transition of references about ports

div hdg ins 1994 No. 32 s 10

Application of division

s 507 ins 1994 No. 32 s 10

Harbours Act 1955 and Port of Brisbane Authority Act 1976 references

s 508 ins 1994 No. 32 s 10

Harbour board references

s 509 ins 1994 No. 32 s 10

Harbour references

s 510 ins 1994 No. 32 s 10

Harbours Corporation and Harbours Trust references

s 511 ins 1994 No. 32 s 10
amd 2004 No. 5 s 8 sch

Gold Coast Waterways Authority references

s 512 ins 1994 No. 32 s 10

**PART 5—TRANSITIONAL PROVISIONS FOR TRANSPORT LEGISLATION
AMENDMENT ACT 1998**

pt hdg ins 1998 No. 33 s 15
exp 23 September 1998

Division 4—Transition of forms

div hdg ins 1998 No. 43 s 23
exp 27 May 1999 (see s 260(3))

Transitional provision about forms

s 260 prev s 260 ins 1998 No. 33 s 15
exp 23 September 1998
pres s 260 ins 1998 No. 43 s 23
exp 27 May 1999 (see s 260(3))

Division 5—Transitional provisions about the Integrated Planning Act 1997

div hdg ins 1999 No. 11 s 33
om 2000 No. 6 s 32

CHAPTER 18—FURTHER TRANSITIONAL PROVISIONS

ch hdg ins 2000 No. 6 s 32

**PART 1—TRANSITIONAL PROVISIONS FOR THE INTEGRATED PLANNING
ACT 1997**

pt hdg ins 2000 No. 6 s 32

Continuing application of previous provisions to non-IDAS applications

s 513 ins 1999 No. 11 s 33

Applications for approval of subdivisions, rezoning or development

s 514 ins 1999 No. 11 s 33

**PART 2—TRANSITIONAL PROVISIONS FOR THE TRANSPORT
LEGISLATION AMENDMENT ACT 2000**

pt 2 (ss 515–518) ins 2000 No. 6 s 33

Transitional—wharf or other harbour work

s 519 ins 2000 No. 6 s 34

**PART 3—TRANSITIONAL PROVISIONS FOR THE TRANSPORT
INFRASTRUCTURE AND ANOTHER ACT AMENDMENT ACT 2003**

pt hdg ins 2003 No. 54 s 36

Application of part

s 520 ins 2003 No. 54 s 36

Definitions for pt 3

s 521 ins 2003 No. 54 s 36
def “previous” amd 2004 No. 9 s 6

Inclusion of s 120

s 522 ins 2003 No. 54 s 36

Approved safety management system for person who is accredited at commencement

s 523 ins 2003 No. 54 s 36

Certificate of accreditation given before commencement

s 524 ins 2003 No. 54 s 36

Annual levy before commencement

s 525 ins 2003 No. 54 s 36

Accreditation conditions

s 526 ins 2003 No. 54 s 36

How to deal with application for amending accreditation conditions made before commencement

s 527 ins 2003 No. 54 s 36

Actions to amend accreditation conditions without application or to suspend or cancel accreditation

s 528 ins 2003 No. 54 s 36

Appeals

s 529 ins 2003 No. 54 s 36

Declaration about s 521, definition “previous”

s 530 ins 2004 No. 9 s 7

PART 4—TRANSITIONAL PROVISION FOR THE TRANSPORT INFRASTRUCTURE AMENDMENT ACT 2004

pt 4 (s 531) ins 2004 No. 54 s 9

SCHEDULE 1—SUBJECT MATTER FOR REGULATIONS

amd 1994 No. 49 s 3 sch 1; 1995 No. 9 s 92 sch 1; 1995 No. 32 s 19; 1997 No. 66 s 53; 1998 No. 43 s 24; 2000 No. 6 s 35; 2000 No. 40 s 17; 2001 No. 36 s 6; 2001 No. 79 s 39; 2003 No. 54 s 37; 2004 No. 9 s 3 sch

SCHEDULE 2—SUBJECT MATTER FOR WATERWAY TRANSPORT MANAGEMENT PLANS

ins 2000 No. 6 s 36

SCHEDULE 3—REVIEWS AND APPEALS

sch hdg amd 2000 No. 6 s 37(1)

sch amd 1994 No. 49 s 3 sch 1; 1995 No. 32 s 20; 1999 No. 11 s 34; 2000 No. 6 s 37(2)–(3); 2000 No. 40 s 18; 2001 No. 79 s 40; 2003 No. 54 s 38

SCHEDULE 4—RAILWAY TUNNEL EASEMENTS

ins 2001 No. 79 s 41

SCHEDULE 5—RENUMBERED CROSS REFERENCES

ins 2003 No. 54 s 39

exp 31 December 2003 (see s 491(4))

SCHEDULE 6—DICTIONARY**Note**—definitions for this Act were originally located in prev s 3.

prev sch 3 amd R1 (see RA s 40); 1994 No. 32 s 13

om R3 (see RA s 40)

pres sch 3 ins 1995 No. 9 s 92 sch 1

def “**accepted representations**” ins 2003 No. 54 s 40(2)def “**access**” ins 2000 No. 40 s 19(2)def “**accreditation**” ins 2003 No. 54 s 40(2)

- def “**accredited person**” ins 1995 No. 32 s 21(2)
 sub 2000 No. 40 s 19(1)–(2)
- def “**acquire**” ins 2000 No. 40 s 19(2)
- def “**administration charge**” ins 2001 No. 36 s 6
- def “**affected person**” ins 2000 No. 40 s 19(2)
- def “**air transport infrastructure**” ins 2000 No. 6 s 38(2)
- def “**alter**” ins 1995 No. 32 s 21(2)
- def “**amusement railway**” ins 1997 No. 66 s 54(1)
- def “**ancillary works and encroachments**” ins 1995 No. 9 s 92 sch 1
 sub 2001 No. 79 s 42(1)–(2)
 amd 2002 No. 12 s 329 sch 2 (as amd 2003 No. 19 s 3 sch)
- def “**approval**” ins 1998 No. 43 s 25(2)
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- def “**approval conditions**” ins 1998 No. 43 s 25(2)
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 FORMING PART OF ANY ACT—EXTRACT FROM COMPETITION
 PRINCIPLES AGREEMENT—PROVISIONS ABOUT ACCESS TO
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- Form F3389 Version June 2003—Railway Manager/Railway Operator Accreditation**
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- Form F3463 Version July 2000—Infringement Notice (Marine)—First and Final Notice**
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- Form F4141 Version September 2003—Approved Safety Management System for Railway**
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- Form F4142 Version September 2003—Exemption from Compliance with Dangerous Goods by Rail Regulation Application**
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- Form M3977 Version 4 February 2004—Notice of Demand for Non-payment of Toll**
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- Form M3978 Version 4 February 2004—Notice of Demand for Non-payment of Toll—Statutory Declaration Nomination**
pubd gaz 2 April 2004 p 1295
- Form M3979 Version 4 February 2004—Notice of Demand for Information regarding Non-payment of Toll**
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199A.....	.487
199B.....	.488
199C.....	.489
200.....	.490
200A.....	.491
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241.....	.494
242.....	.495
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244.....	.497
245.....	.498
246.....	.499
247.....	.500
248.....	.501
249.....	.502
250.....	.503
251.....	.504
252.....	.505
253.....	.506
254.....	.507
255.....	.508
256.....	.509
257.....	.510
258.....	.511
259.....	.512
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261.....	.513
262.....	.514
263.....	.515
264.....	.516
265.....	.517
266.....	.518
267.....	.519

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Previous	Renumbered as
268.....	.520
269.....	.521
270.....	.522
271.....	.523
272.....	.524
273.....	.525
274.....	.526
275.....	.527
276.....	.528
277.....	.529
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sch 1 s 8.....	.sch 1 s 7
sch 1 s 9.....	.sch 1 s 8
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sch 1 s 11.....	.sch 1 s 12
sch 1 s 12.....	.sch 1 s 13
sch 1 s 13.....	.sch 1 s 14
sch 1 s 14.....	.sch 1 s 15
sch 1 s 15.....	.sch 1 s 16
sch 1 s 16.....	.sch 1 s 17
sch 1 s 17.....	.sch 1 s 18
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sch 1 s 19.....	.sch 1 s 20
sch 1 s 20.....	.sch 1 s 21
sch 1 s 21.....	.sch 1 s 22
sch 1 s 22.....	.sch 1 s 23
sch 1 s 23.....	.sch 1 s 24
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sch 2.....	.sch 3
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sch 3.....	.sch 6

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under the Reprints Act 1992 s 43 as required by the Transport Infrastructure Act 1994
s 126O

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3.....	.2
4.....	.3
5.....	.4
6.....	.5
7.....	.6
8.....	.7

Previous	Renumbered as
9.....	8
10.....	9
11.....	10
12.....	11
13.....	12
14.....	13
pt 1A	pt 2
14A	14
14B	15
14C	16
pt 2.....	pt 3
15.....	17
16.....	18
17.....	19
pt 3.....	pt 4
18.....	20
19.....	21
20.....	22
20, def “ancillary works and enroachments”, (a)(ia)	22, def “ancillary works and enroachments”, (a)(ii)
20, def “ancillary works and enroachments”, (a)(ii)	22, def “ancillary works and enroachments”, (a)(iii)
20, def “ancillary works and enroachments”, (a)(iii)	22, def “ancillary works and enroachments”, (a)(iv)
20, def “ancillary works and enroachments”, (a)(iv)	22, def “ancillary works and enroachments”, (a)(v)
20, def “ancillary works and enroachments”, (a)(v)	22, def “ancillary works and enroachments”, (a)(vi)
20, def “ancillary works and enroachments”, (a)(vi)	22, def “ancillary works and enroachments”, (a)(vii)
20, def “ancillary works and enroachments”, (a)(vii)	22, def “ancillary works and enroachments”, (a)(viii)

Previous	Renumbered as
20, def “ancillary works and enroachments”, (a)(viii)	22, def “ancillary works and enroachments”, (a)(ix)
20, def “ancillary works and enroachments”, (a)(ix)	22, def “ancillary works and enroachments”, (a)(x)
20, def “ancillary works and enroachments”, (a)(x)	22, def “ancillary works and enroachments”, (a)(xi)
20, def “ancillary works and enroachments”, (a)(xi)	22, def “ancillary works and enroachments”, (a)(xii)
20, def “ancillary works and enroachments”, (a)(xii)	22, def “ancillary works and enroachments”, (a)(xiii)
20, def “ancillary works and enroachments”, (a)(xiii)	22, def “ancillary works and enroachments”, (a)(xiv)
20, def “ancillary works and enroachments”, (a)(xiv)	22, def “ancillary works and enroachments”, (a)(xv)
21	23
22	24
23	25
24	26
25	27
26	28
27	29
28	30
29	31
30	32
31	33
32	34
33	35
34	36
35	37
36	38
37	39
38	40
39	41
40	42

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Previous	Renumbered as
41.....	.43
42.....	.44
43.....	.45
44.....	.46
45.....	.47
45A.....	.48
46.....	.49
47.....	.50
48.....	.51
49.....	.52
50.....	.53
51.....	.54
52.....	.55
53.....	.56
54.....	.57
55.....	.58
56.....	.59
57.....	.60
58.....	.61
59.....	.62
60.....	.63
61.....	.64
62.....	.65
63.....	.66
64.....	.67
65.....	.68
66.....	.69
67.....	.70
69.....	.71
70.....	.72
71.....	.73
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71A.....	.74
71B.....	.75
71C.....	.76
71D.....	.77
71E.....	.78
71F.....	.79
71G.....	.80
71H.....	.81
71I.....	.82
71J.....	.83
71K.....	.84
71L.....	.85
71M.....	.86
71N.....	.87
71O.....	.88
71P.....	.89

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Previous	Renumbered as
71Q	90
71R	91
71S.....	92
71T.....	93
71U	94
71V	95
71W.....	96
71X.....	97
71Y	98
71Z.....	99
71ZA	100
71ZB	101
71ZC	102
71ZD	103
71ZE	104
71ZF	105
71ZG	106
71ZH	107
71ZI.....	108
71ZJ.....	109
71ZK.....	110
71ZL	111
71ZM.....	112
71ZN	113
71ZO	114
71ZP	115
71ZQ.....	116
71ZR	117
71ZS	118
71ZT	119
71ZU	120
71ZV	121
71ZW.....	122
71ZX	123
71ZY	124
71ZZ	125
71ZZA	126
71ZZB	127
71ZZC	128
71ZZD	129
71ZZE	130
71ZZF	131
71ZZG	132
71ZZH	133
71ZZI.....	134
71ZZJ.....	135
71ZZK.....	136
71ZZL	137

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Previous	Renumbered as
71ZZM	138
71ZZN	139
71ZZO	140
71ZZP	141
71ZZQ	142
71ZZR	143
71ZZS	144
71ZZT	145
71ZZU	146
71ZZV	147
71ZZW	148
71ZZX	149
71ZZY	150
71ZZZ	151
71ZZZA	152
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72	153
73	154
74	155
75	156
76	157
77	158
78	159
79	160
80	161
81	162
82	163
83	164
84	165
85	166
86	167
87	168
88	169
89	170
90	171
91	172
92	173
93	174
94	175
95	176
96	177
97	178
98	179
101	180
ch 7	ch 8
101A	181
101B	182
101C	183

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Previous	Renumbered as
101D	184
101E.....	185
101F.....	186
101G	187
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102.....	188
103.....	189
104.....	190
105.....	191
105A	192
105B	193
106.....	194
107.....	195
108.....	196
109.....	197
110.....	198
110A	199
111.....	200
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112.....	201
113.....	202
114.....	203
115.....	204
116.....	205
117.....	206
119.....	207
120.....	208
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122.....	210
123.....	211
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126B	215
126C	216
126D	217
126E.....	218
126F.....	219
126G	220
126I	221
126J	222
126K	223
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126M.....	225
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131.....	.229
132.....	.230
133.....	.231
134.....	.232
136.....	.233
137.....	.234
138.....	.235
139.....	.236
140.....	.237
141.....	.238
142.....	.239
144.....	.240
pt 3.....	.pt 4
145.....	.241
146.....	.242
147.....	.243
148.....	.244
149.....	.245
150.....	.246
151.....	.247
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151A248
151B249
151C250
151D251
151E.....	.252
151F.....	.253
div 2.....	.div 3
152.....	.254
153.....	.255
154.....	.256
155.....	.257
156.....	.258
157.....	.259
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sch 1 s 12.....	.sch 1 s 13
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 under the Reprints Act 1992 s 43 as required by the Transport Infrastructure Act 1994
 s 131A

Previous	Renumbered as
61AA.....	.62
61AB.....	.63
61AC.....	.64
61AD.....	.65
61AE.....	.66
61AF.....	.67
61AG.....	.68
61AH.....	.69
61AI.....	.70
61AJ.....	.71
ch 5A.....	ch 6
61A.....	.72
61B.....	.73
61C.....	.74
61D.....	.75
61E.....	.76
61F.....	.77
61G.....	.78
61H.....	.79
61I.....	.80
61J.....	.81
61K.....	.82
61L.....	.83
61M.....	.84
61N.....	.85
61O.....	.86
61P.....	.87
61Q.....	.88
61R.....	.89
61S.....	.90
61T.....	.91
61U.....	.92
61V.....	.93
61W.....	.94
61X.....	.95
61Y.....	.96
61Z.....	.97
61ZA.....	.98
61ZAA.....	.99
61ZB.....	.100
61ZC.....	.101
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62.....	.102
63.....	.103

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Previous	Renumbered as
64	104
65	105
65A	106
65B	107
66	108
67	109
68	110
69	111
ch 7	ch 8
70	112
71	113
71(2)	113(1)
71(3)	113(2)
72	114
73	115
74	116
76	117
80A	118
81	119
83	120
85	121
87	122
88	123
89	124
89A	125
89B	126
90	127
91	128
94	129
94(2)	129(1)
94(5)	129(2)
95	130
96	131
97	132
98	133
99	134
101	135
102	136
102(5A)	136(6)
102(6)	136(7)
102(7)	136(8)
102(8)	136(9)
102(9)	136(10)
102(10)	136(11)
103	137
104	138
104(2A)	138(3)
104(3)	138(4)

Previous	Renumbered as
104(4)	138(5)
104(5)	138(6)
104(6)	138(7)
105	139
106	140
107	141
108	142
112	143
113	144
114	145
115	146
116	147
117	148
118	149
119	150
120	151
121	152
122	153
123	154
124	155
125	156
126	157
127	158
128	159
129	160
130	161
131	162
131A	163